U

U. B. An abbreviation for "Upper Bench."

U. C. An abbreviation for "Upper Canada," used in citing the reports.

U. R. Initials of *"uti rogas,"* be it as you desire, a ballot thus inscribed, by which the Romans voted in favor of a bill or candidate. Tayl.Civil Law, 191.

U. S. An abbreviation for "United States."

U. S. E. S. United States Employment Service.

UBERRIMA FIDES. Lat. The most abundant good faith; absolute and perfect candor or openness and honesty; the absence of any concealment or deception, however slight. A phrase used to express the perfect good faith, concealing nothing, with which a contract must be made; for example, in the case of insurance, the insured must observe the most perfect good faith towards the insurer. 1 Story, Eq.Jur. § 317.

Contracts of life insurance are said to be "uberrimæ fidæ" when any material misrepresentation or concealment is fatal to them. Equitable Life Assur. Soc. v. McElroy, 28 C.C.A. 365, 83 F. 631, 636.

UBI ALIQUID CONCEDITUR, CONCEDITUR ET ID SINE QUO RES IPSA ESSE NON POTEST. When anything is granted, that also is granted without which the thing granted cannot exist. Broom, Max. 483; 13 Mees. & W. 706.

UBI ALIQUID IMPEDITUR PROPTER UNUM, EO REMOTO, TOLLITUR IMPEDIMENTUM. Where anything is impeded by one single cause, if that be removed, the impediment is removed. Branch, Princ., citing 5 Coke, 77*a*.

UBI CESSAT REMEDIUM ORDINARIUM, IBI DECURRITUR AD EXTRAORDINARIUM. Where the ordinary remedy fails, recourse must be had to an extraordinary one. 4 Coke, 92*b*.

UBI CULPA EST, IBI PŒNA SUBESSE DEBET. Where the crime is committed, there ought the punishment to be undergone. Jenk.Cent. 325.

UBI DAMNA DANTUR, VICTUS VICTORI IN EXPENSIS CONDEMNARI DEBET. Where damages are given, the vanquished party ought to be condemned in costs to the victor. 2 Inst. 289; 3 Sharsw. Bla. Comm. 399.

UBI EADEM RATIO, IBI EADEM LEX; ET DE SIMILIBUS IDEM EST JUDICIUM. 7 Coke, 18. Where the same reason exists, there the same law prevails; and, of things similar, the judgment is similar. Where there is the same reason, there is the same law, and the same judgment should be rendered on the same state of facts. Broom, Max. 103, n. 153, 155.

UBI EST FORUM, IBI ERGO EST JUS. The law of the forum governs. 31 Law Mag. & Rev. 471.

UBI EST SPECIALIS, ET RATIO GENERALIS GENERALITER ACCIPIENDA EST. See Ubi lex est specialis, etc.

UBI ET DANTIS ET ACCIPIENTIS TURPITUDO VERSATUR, NON POSSE REPETI DICIMUS; QUOTIENS AUTEM ACCIPIENTIS TURPITUDO VERSATUR, REPETI POSSE. Where there is turpitude on the part of both giver and receiver, we say it cannot be recovered back; but as often as the turpitude is on the side of the receiver [alone] it can be recovered back. Mason v. Waite, 17 Mass. 562.

UBI FACTUM NULLUM, IBI FORTIA NULLA. Where there is no principal fact, there can be no accessory. 4 Coke, 426. Where there is no act, there can be no force.

UBI JUS, IBI REMEDIUM. Where there is a right, there is a remedy. Broom, Max. 191, 204; 1 Term R. 512; Co.Litt. 197*b*; 7 Gray (Mass.) 197; Henry v. Cherry & Webb, 73 A. 97, 101, 30 R.I. 13, 24 L.R.A. 991, 136 Am.St.Rep. 928, 18 Ann. Cas. 1006. It is said that the rule of primitive law was the reverse: Where there is a remedy, there is a right. Salmond, Jurispr. 645.

UBI JUS INCERTUM, IBI JUS NULLUM. Where the law is uncertain, there is no law.

UBI LEX ALIQUEM COGIT OSTENDERE CAUSAM, NECESSE EST QUOD CAUSA SIT JUSTA ET LEGITIMA. Where the law compels a man to show cause, it is necessary that the cause be just and lawful. 2 Inst. 289.

UBI LEX EST SPECIALIS, ET RATIO EJUS GENERALIS, GENERALITER ACCIPIENDA EST. 2 Inst. 43. Where the law is special, and the reason of it general, it ought to be taken as being general. When the reason for a particular legislative act and acts of the same general character is the same, they should have the same effect. Guile v. La Crosse Gas & Electric Co., 145 Wis. 157, 130 N.W. 234, 241.

UBI LEX NON DISTINGUIT, NEC NOS DISTINGUERE DEBEMUS. Where the law does not distinguish, neither ought we to distinguish. 7 Coke, 5*b*.

UBI MAJOR PARS EST, IBI TOTUM. Where the greater part is, there the whole is. That is, majorities govern. Moore, 578.

UBI MATRIMONIUM, IBI DOS. Where there is marriage, there is dower. Bract. 92.

UBI NON ADEST NORMA LEGIS, OMNIA QUASI PRO SUSPECTIS HABENDA SUNT. When the law fails to serve as a rule, almost everything ought to be suspected. Bac. Aphorisms, 25.

UBI NON EST ANNUA RENOVATIO, IBI DECIMÆ NON DEBENT SOLVI. Where there is no annual renovation, there tithes ought not to be paid.

UBI NON EST CONDENDI AUCTORITAS, IBI NON EST PARENDI NECESSITAS. Dav. Ir. K. B. 69. Where there is no authority for establishing a rule, there is no necessity of obeying it.

UBI NON EST DIRECTA LEX, STANDUM EST ARBITRIO JUDICIS, VEL PROCEDENDUM AD SIMILIA. Ellesm. Post. N. 41. Where there is no direct law, the opinion of the judge is to be taken, or references to be made to similar cases.

UBI NON EST LEX, IBI NON EST TRANSGRESSIO, QUOAD MUNDUM. Where there is no law, there is no transgression, so far as relates to the world. 4 Coke, 16*b*.

UBI NON EST MANIFESTA INJUSTITIA, JUDICES HABENTUR PRO BONIS VIRIS, ET JUDICATUM PRO VERITATE. Where there is no manifest injustice, the judges are to be regarded as honest men, and their judgment as truth. Goix v. Low, 1 Johns. Cas. (N.Y.) 341, 345.

UBI NON EST PRINCIPALIS, NON POTEST ESSE ACCESSORIUS. 4 Coke, 43. Where there is no principal, there cannot be an accessory.

UBI NULLA EST CONJECTURA QUÆ DUCAT ALIO, VERBA INTELLIGENDA SUNT EX PROPRIETATE, NON GRAMMATICA, SED POPULARI EX USU. Where there is nothing to call for a different construction, [the] words [of an instrument] are to be understood, not according to their strict grammatical meaning, but according to their popular and ordinary sense. Grot. de Jure B. lib. 2, c. 16.

UBI NULLUM MATRIMONIUM, IBI NULLA DOS. Where there is no marriage, there is no dower. Bract. fol. 92; 2 Bl.Comm. 130; Co.Litt. 32*a*.

UBI PERICULUM, IBI ET LUCRUM COLLOCATUR. He at whose risk a thing is, should receive the profits arising from it.

UBI PUGNANTIA INTER SE IN TESTAMENTO JUBERENTUR, NEUTRUM RATUM EST. Where repugnant or inconsistent directions are contained in a will, neither is valid. Dig. 50, 17, 188, pr.

UBI QUID GENERALITER CONCEDITUR INEST HÆC EXCEPTIO, SI NON ALIQUID SIT CONTRA JUS FASQUE. 10 Coke, 78. Where a thing is conceded generally [or granted in general terms], this exception is implied: that there shall be nothing contrary to law and right.

UBI QUIS DELINQUIT, IBI PUNIETUR. Where a man offends, there he shall be punished. In cases of felony, the trial shall be always by the common law in the same place where the offense was, and shall not be supposed in any other place. 6 Coke 47b

UBI RE VERA. Where in reality; when in truth or in point of fact. Cro. Eliz. 645; Cro. Jac. 4.

UBI SUPRA. Lat. Where above mentioned. Webster, Dict.

UBI VERBA CONJUNCTA NON SUNT SUFFICIT ALTERUTRUM ESSE FACTUM. Dig. 50, 17, 110, 3. Where words are not conjoined, it is enough if one or other be complied with. Where words are used disjunctively, it is sufficient that either one of the things enumerated be performed.

UBICUNQUE EST INJURIA, IBI DAMNUM SEQUITUR. Wherever there is a wrong, there damage follows. 10 Co. 116.

UBIQUITY. Omnipresence; presence in several places, or in all places, at one time. A fiction of English law is the "legal ubiquity" of the sovereign, by which he is constructively present in all the courts. 1 Bl.Comm. 270.

UDAL. A term mentioned by Blackstone as used in Finland to denote that kind of right in real property which is called, in English law, "allodial." 2 Bl.Comm. 45, note *f*.

UFFER. See Huisserium.

UKAAS, UKASE. Originally, a law or ordinance made by the czar of Russia.

Hence, any official decree or proclamation. Webster, Dict.

ULLAGE. In commercial law. The amount wanting when a cask, on being gauged, is found not to be completely full.

ULNA FERREA. L.Lat. In old English law. The iron ell; the standard ell of iron, kept in the exchequer for the rule of measure.

ULNAGE. Alnage. See Alnager.

ULTERIOR. Beyond what is manifest, seen or avowed, intentionally kept concealed. Harding v. McCullough, 236 Iowa 556, 19 N.W.2d 613, 616.

ULTIMA RATIO. Lat. The last argument; the last resort; the means last to be resorted to.

ULTIMA VOLUNTAS TESTATORIS EST PERIMPLENDA SECUNDUM VERAM INTENTIONEM SUAM. The last will of a testator is to be fulfilled according to his true intention. Co.Litt. 322; Broom, Max. 566.

ULTIMATE. At last, finally, or at the end; the last in the train of progression or sequence tended toward by all that precedes; arrived at as the last result; final. Texas Employers Ins. Ass'n v. Reed, Tex.Civ.App., 150 S.W.2d 858, 862.

ULTIMATE FACTS. In practice and pleading. Averments in pleadings. Oliver v. Coffman, 113 Ind.App. 507, 45 N.E.2d 351, 354, 355; Issuable facts. Maxwell Steel Vault Co. v. National Casket Co., D.C.N.Y., 205 F. 515, 524. Facts essential to the right of action or matter of defense. Wichita Falls & Oklahoma Ry. Co. v. Pepper, 134 Tex. 360, 135 S.W.2d 79, 84. Facts necessary and

essential for decision by court. People ex rel. Hudson & M. R. Co. v. Sexton, Sup., 44 N.Y.S.2d 884, 885. Those facts which it is expected evidence will support. McDuffie v. California Tehama Land Corporation, 138 Cal.App. 245, 32 P.2d 385, 386. The issuable, constitutive, or traversable facts essential to statement of cause of action. Johnson v. Johnson, 92 Mont. 512, 15 P.2d 842, 844. The logical conclusions deduced from certain primary evidentiary facts. Mining Securities Co. v. Wall, 99 Mont. 596, 45 P.2d 302, 306.

Those facts found in that vaguely defined field lying between evidential facts on the one side and the primary issue or conclusion of law on the other, being but the logical results of the proofs, or, in other words, mere conclusions of fact. Christmas v. Cowden, 44 N.M. 517, 105 P.2d 484, 487.

The final or resulting fact reached by processes of logical reasoning from the detached or successive facts in evidence, and which is fundamental and determinative of the whole case. Levins v. Rovegno, 71 Cal. 273, 12 P. 161; Kahn v. Central Smelting Co., 2 Utah, 371; Caywood v. Farrell, 175 Ill. 480, 51 N.E. 775; Maeder Steel Products Co. v. Zanello, 109 Or. 562, 220 P. 155, 159. The final resulting effect reached by processes of legal reasoning from the evidentiary facts. Oregon Home Builders v. Montgomery Inv. Co., 94 Or. 349, 184 P. 487, 489. See, also, Ultimate Facts.

ULTIMATUM. Lat. The last. The final and ultimate proposition made in negotiating a treaty, a contract, or the like. The word also means the result of a negotiation, and it comprises the final determination of a party concerned in the matter in dispute.

ULTIMUM SUPPLICIUM. Lat. The last or extreme punishment; the extremity of punishment; the punishment of death. 4 Bl.Comm. 17.

ULTIMUM SUPPLICIUM ESSE MORTEM SOLAM INTERPRETAMUR. The extremest punishment we consider to be death alone. Dig. 48, 19, 21.

ULTIMUS HÆRES. Lat. The last or remote heir; the lord. So called in contradistinction to the *hæres proximus* and the *hæres remotior.* Dalr. Feud. Prop. 110.

ULTRA. Lat. Beyond; outside of; in excess of.

Damages Ultra

Damages beyond a sum paid into court.

Ultra Mare

Beyond sea. One of the old essoins or excuses for not appearing in court at the return of process. Bract. fol. 338.

Ultra Reprises

After deduction of drawbacks; in excess of deductions or expenses.

Ultra Vires

The modern technical designation, in the law of corporations, of acts beyond the scope of the powers of a corporation, as defined by its charter or act of incorporation. State ex rel. v. Holston Trust Co., 168 Tenn. 546, 79 S.W.2d 1012, 1016. The term has a broad application and includes not only acts prohibited by the charter, but acts which are in excess of powers granted and not prohibited. State ex rel. Supreme Temple of Pythian Sisters v. Cook, 234 Mo.App. 898, 136 S.W.2d 142, 146, and generally applied either when a corporation has no power whatever to do an act, or when the corporation has the power but exercises it irregularly. People ex rel. Barrett v. Bank of Peoria, 295 Ill.App. 543, 15 N.E.2d 333, 335. Act is "ultra vires" when corporation is without authority to perform it under any circumstances or for any purpose. Orlando Orange Groves Co. v. Hale, 107 Fla. 304, 144 So. 674, 676.

By doctrine of "ultra vires" a contract made by a corporation beyond the scope of its corporate powers is unlawful. Community Federal Sav. & Loan Ass'n of Independence, Mo., v. Fields, C.C.A.Mo., 128 F.2d 705, 708.

While the phrase "ultra vires" has been used to designate, not only acts beyond the express and implied powers of a corporation, but also acts contrary to public policy or contrary to some express statute prohibiting them, the latter class of acts is now termed illegal, and the "ultra vires" confined to the former class. In re Grand Union Co., C.C.A.N.Y., 219 F. 353, 363; Staacke v. Routledge, 111 Tex. 489, 241 S.W. 994, 998; Pennsylvania R. Co. v. Minis, 120 Md. 461, 496, 87 A. 1062, 1072.

ULTRA POSSE NON POTEST ESSE, ET VICE VERSA. What is beyond possibility cannot exist, and the reverse, [what cannot exist is not possible.] Wing. Max. 100.

ULTRONEOUS WITNESS. In Scotch law. A volunteer witness; one who appears to give evidence without being called upon. 2 Alis.Crim.Pr. 393.

UMPIRAGE. The decision of an umpire. Powell v. Ford, 4 Lea (Tenn.) 288. The word "Umpirage," in reference to an umpire, is the same as the word "award," in reference to arbitrators; but "award" is commonly applied to the decision of the umpire also.

UMPIRE. One clothed with authority to act alone in rendering a decision where arbitrators have disagreed. Hughes v. National Fuel Co., 121 W.Va. 392, 3 S.E.2d 621, 626.

When matters in dispute are submitted to two or more arbitrators, and they do not agree in their decision, it is usual for another person to be called in as "umpire," to whose sole judgment it is then referred. Brown. And see Ingraham v. Whitmore, 75 Ill. 30; Tyler v. Webb, 10 B. Mon. (Ky.) 123; Lyon v. Blossom, 4 Duer (N.Y.) 325. An "umpire," strictly speaking, makes his award independently of that of the arbitrators. Dennis v. Standard Fire Ins. Co., 90 N.J.Eq. 419, 107 A. 161, 163.

UN-. A prefix used indiscriminately, and may mean simply "not." Thus, "unlawful" means "not authorized by law." State v. Sanders, 136 La. 1059, 68 So. 125, 126, Ann.Cas.1916E, 105.

UN NE DOIT PRISE ADVANTAGE DE SON TORT DEMESNE. 2 And. 38, 40. One ought not to take advantage of his own wrong.

UNA PERSONA VIX POTEST SUPPLERE VICES DUARUM. 7 Coke, 118. One person can scarcely supply the place of two. See 9 H.L.Cas. 274.

UNA VOCE. Lat. With one voice; unanimously; without dissent.

UNABLE. This term, as used in a statute providing that evidence given in a former trial may be proved in a subsequent trial, where the witness is unable to testify, means mentally and physically unable. Hansen-Rynning v. Oregon-Washington R. & Nav. Co., 105 Or. 67, 209 P. 462, 464.

UNACCRUED. Not become due, as rent on a lease. Elms Realty Co. v. Wood, 285 Mo. 130, 225 S.W. 1002, 1005.

UNADJUSTED. Uncertain; not agreed upon. Richardson v. Woodbury, 43 Me. 214.

UNALIENABLE. Inalienable; incapable of being aliened, that is, sold and transferred.

UNAMBIGUOUS. Susceptible of but one meaning. Lawrie v. Miller, Tex.Com.App., 45 S.W.2d 172, 173.

UNANIMITY. Agreement of all the persons concerned, in holding one and the same opinion or determination of any matter or question; as the concurrence of a jury in deciding upon their verdict. See Unanimous.

UNANIMOUS. To say that a proposition was adopted by a "unanimous" vote does not always mean that every one present voted for the proposition, but it may, and generally does, mean, when a viva voce vote is taken, that no one voted in the negative. State v. Stephens, 195 Mo.App. 34, 189 S.W. 630, 631.

UNASCERTAINED. Not certainly known or determined. Commissioner of Internal Revenue v. Owens, C.C.A.10, 78 F.2d 768, 773.

UNASCERTAINED DUTIES. Payment in gross, on an estimate as to amount, and where the merchant, on a final liquidation, will be entitled by law to allowances or deductions which do not depend on the rate of duty charged, but on the ascertainment of the quantity of the article subject to duty. Moke v. Barney, 5 Blatchf. 274, Fed. Cas.No.9,698.

UNAVOIDABLE. Not avoidable, incapable of being shunned or prevented, inevitable, and necessary. Day Wood Heel Co. v. Rover, 123 Ohio St. 349, 175 N.E. 588, 590.

UNAVOIDABLE ACCIDENT. An inevitable accident. Leland v. Empire Engineering Co., 135 Md. 208, 108 A. 570, 575, which could not have been foreseen and prevented by using ordinary diligence, and resulting without fault. U. S. v. Kansas City Southern Ry. Co., D.C.Ark., 189 F. 471. Not necessarily an accident which it was physically impossible, in the nature of things, for the person to have prevented, but one not occasioned in any degree, either remotely or directly, by the want of such care or skill as the law holds every man bound to exercise. An accident which could not be prevented by the exercise of ordinary care and prudence. Wollaston v. Stiltz, 114 A. 198, 200, 1 W.W.Harr. (Del.) 273; Atlantic Coast Line R. Co. v. Cook, 34 Ga.App. 1, 128 S.E. 75, 76. A casualty which occurs without negligence of either party and when all means which common prudence suggests have been used to prevent it. Bucktrot v. Partridge, 130 Okl. 122, 265 P. 768, 771.

The term is sometimes defined, however, as synonymous with "act of God,"—any accident produced by physical causes which are inevitable, such as lightnings, storms, perils of the sea, earthquakes, inundations, sudden death, or illness. Early v. Hampton, 15 Ga.App. 95, 82 S.E. 669, 671.

UNAVOIDABLE CASUALTY. An event or accident which human prudence, foresight, and sagacity cannot prevent, happening against will and without negligence. Fernwood Mining Co. v. Pluma, 211 S.W. 159, 163, 138 Ark. 193; Sabin v. Sunset Garden Co., 184 Okl. 106, 85 P.2d 294, 295. Welles v. Castles, 3 Gray (Mass.) 325. Within the meaning of statutes in several states relating to the vacation of judgments, means some casualty or misfortune growing out of conditions or circumstances that prevented the party or his attorney from doing something that, except therefor, would have been done, and does not include mistakes or errors of judgment growing out of misconstruction or understanding of the law, or the failure of parties or counsel through mistake to avail themselves of remedies, which if resorted to would have prevented the casualty or misfortune.

If by any care, prudence, or foresight a thing could have been guarded against, it is not unavoidable. Central Line of Boats v. Lowe. 50 Ga. 509; E. P. Barnes & Bro. v. Eastin, 190 Ky. 392, 227 S.W. 578, 580. The term is not ordinarily limited to an act of God. Kirby v. Davis, 210 Ala. 192, 97 So. 655, 656.

The term refers to events which human prudence or foresight cannot prevent (but see Kohlman v. Moore, 175 Ky. 710, 194 S.W. 933, 935), such as disease and death, miscarriage of the mails, or mistake in the wording of a telegram. Wagner v. Lucas, 79 Okl. 231, 193 P. 421, 422. It may include the sickness. Thweatt v. Grand Temple and Tabernacle of International Order of Twelve Knights and Daughters of Tabor, of Arkansas, 128 Ark. 269, 193 S. W. 508, 509, or death of an attorney, Columbia County v. England, 151 Ark. 465, 236 S.W. 625, 626, or his failure, through some oversight or misunderstanding, to defend. Krause v. Hobart, 173 Iowa, 330, 155 N.W. 279, but it does not apply to the neglect of an attorney or his client; Gavin v. Heath, 125 Okl. 118, 256 P. 745, 746; McGuire v. Mishawaka Woolen Mills, 218 Ky. 530, 291 S.W. 747, 749.

UNAVOIDABLE CAUSE. A cause which reasonably prudent and careful men under like circumstances do not and would not ordinarily anticipate, and whose effects, under similar circumstances, they do not and would not ordinarily avoid. Chicago, B. & Q. R. Co. v. U. S., 114 C.C.A. 334, 194 F. 342.

UNAVOIDABLE DANGERS. This term in a marine policy covering unavoidable dangers of the river includes the unexplained capsizing of a vessel, though human intervention existed in the operation of the vessel, for "unavoidable dangers" mean those unpreventable by persons operating the vessel, and, like the term perils of the sea,

include all kinds of marine casualties, thus including accidents in which there is human intervention. A river vessel's tendency to turn over, due to topheavy construction, necessary on account of the shallowness of rivers, is an "unavoidable danger" within the policy. Hillman Transp. Co. v. Home Ins. Co. of New York, 268 Pa. 547, 112 A. 108, 111.

UNBOLTED CORN MEAL. The courts judicially know that corn meal is an unmixed meal made from entire grains of corn, and that "unbolted corn meal" is simply meal not bolted, or from which the bran has not been sifted or separated. Miller Grain & Commission Co. v. International Sugar Feed No. 2 Co., 197 Ala. 100, 72 So. 368.

UNBROKEN. Continuous, as adverse possession. Panhandle & S. F. Ry. Co. v. Hoffman, Tex.Civ. App., 250 S.W. 246, 248.

UNCEASESATH. In Saxon law. An oath by relations not to avenge a relation's death. Blount.

UNCERTAINTY. The state or quality of being unknown or vague. Such vagueness, obscurity, or confusion in any written instrument, *e. g.*, a will, as to render it unintelligible to those who are called upon to execute or interpret it, so that no definite meaning can be extracted from it.

UNCHASTITY. Impurity in mind and conduct, which may exist without actually engaging in unlawful sexual intercourse. State v. Valvoda, 170 Iowa 102, 152 N.W. 21, 23; Cooper v. State, 15 Ala.App. 657, 74 So. 753, 754.

UNCIA. Lat. In Roman law. An ounce; the twelfth of the Roman "*as*," or pound. The twelfth part of anything; the proportion of one-twelfth. 2 Bl. Comm. 462, note *m*.

UNCIA AGRI, UNCIA TERRÆ. These phrases often occur in the charters of the British kings, and signify some measure or quantity of land. It is said to have been the quantity of twelve *modii;* each *modius* being possibly one hundred feet square. Jacob; Mon. Ang. tom. 3, pp. 198, 205.

UNCIARIUS HÆRES. Lat. In Roman law. An heir to one-twelfth of an estate or inheritance. Calvin.

UNCLE. The brother of one's father or mother. State v. Reedy, 44 Kan. 190, 24 P. 66; State v. Guiton, 51 La.Ann. 155, 24 So. 784; Capps v. State, 87 Fla. 388, 100 So. 172, 173.

UNCLEAN HANDS PRINCIPLE. Principle that one who has unclean hands is not entitled to relief in equity. Van Antwerp v. Van Antwerp, 242 Ala. 92, 5 So.2d 73, 78, 79, 80. The doctrine has no application unless party's wrongdoing has some proximate relation to the subject matter in controversy. Fritz v. Jungbluth, 141 Neb. 770, 4 N.W. 2d 911, 913, 914. Vercesi v. Petri, 334 Pa. 385, 5 A. 2d 563, 565.

UNCONDITIONAL. Not limited or affected by any condition;—applied especially to the quality of an insured's estate in the property insured. Libby Lumber Co. v. Pacific States Fire Ins. Co., 79 Mont. 166, 255 P. 340, 344, 60 A.L.R. 1; Rochester German Ins. Co. v. Schmidt, 89 C.C.A. 333, 162 F. 447. See the subtitle "Sole and unconditional owner" under the main title Owner.

UNCONSCIONABLE BARGAIN. An unconscionable bargain or contract is one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other. Hume v. U. S., 10 S.Ct. 134, 132 U.S. 406, 33 L.Ed. 393; Edler v. Frazier, 174 Iowa 46, 156 N.W. 182, 187; Hall v. Wingate, 159 Ga. 630, 126 S.E. 796, 813; 2 Ves. 125; 4 Bouv. Inst. n. 3848.

UNCONSCIONABLE CONDUCT. Conduct that is monstrously harsh and shocking to the conscience. Domus Realty Corporation v. 3440 Realty Co., 179 Misc. 749, 40 N.Y.S.2d 69, 73.

UNCONSCIOUS. Not possessed of mind. Wilson v. Ray, 64 Ga.App. 540, 13 S.E.2d 848, 852.

UNCONSTITUTIONAL. That which is contrary to the constitution. The opposite of "constitutional." See State v. McCann, 4 Lea (Tenn.) 10; In re Rahrer, C.C.Kan., 43 F. 558, 10 L.R.A. 444; Norton v. Shelby County, 6 S.Ct. 1121, 118 U.S. 425, 30 L.Ed. 178. The word does not necessarily mean that the act assailed is contrary to sound principles of legislation. Ketterer v. Lederer, D. C.Pa., 269 F. 153, 154.

This word is used in two different senses. One, which may be called the English sense, is that the legislation conflicts with some recognized general principle. This is no more than to say that it is unwise, or is based upon a wrong or unsound principle, or conflicts with a generally accepted policy. The other, which may be called the American sense, is that the legislation conflicts with some provision of our written Constitution, which it is beyond the power of the Legislature to change. U. S. v. American Brewing Co., D.C.Pa., 1 F.2d 1001, 1002.

This expression as applied to an act of parliament means simply that it is, in the opinion of the speaker, opposed to the spirit of the English constitution; it cannot mean that the act is either a breach of the law or is void. When applied to a law passed by the French parliament, it means that the law is opposed to the articles of the constitution; it does not necessarily mean that the law in question is void, for it is by no means certain that any French court will refuse to enforce a law because it is unconstitutional. It would probably, though not of necessity, be, when employed by a Frenchman, a term of censure. Dicey, Const. 516.

UNCONTROLLABLE. Incapable of being controlled or ungovernable. Alford v. Zeigler, 65 Ga. App. 294, 16 S.E.2d 69, 72.

UNCONTROLLABLE IMPULSE. As an excuse for the commission of an act otherwise criminal, this term means an impulse towards its commission of such fixity and intensity that it cannot be resisted by the person subject to it, in the enfeebled condition of his will and moral sense resulting from derangement or mania. See Insanity. And see State v. O'Neil, 51 Kan. 651, 33 P. 287, 24 L.R.A. 555.

UNCORE PRIST. L. Fr. Still ready. A species of plea or replication by which the party alleges

that he is still ready to pay or perform all that is justly demanded of him. In conjunction with the phrase *"tout temps prist,"* it signifies that he has always been and still is ready to do what is required, thus saving costs where the whole cause is admitted, or preventing delay where it is a replication, if the allegation is made out. 3 Bl. Comm. 303.

UNCUTH. In Saxon law. Unknown; a stranger. A person entertained in the house of another was, on the first night of his entertainment, so called. Bract. fol. 124*b*. See Twa Night Gest.

UNDE NIHIL HABET. Lat. In old English law. The name of the writ of dower, which lay for a widow, where *no dower* at all had been assigned her within the time limited by law. 3 Bl. Comm. 183.

UNDEFENDED. A term sometimes applied to one who is obliged to make his own defense when on trial, or in a civil cause. A cause is said to be undefended when the defendant makes default, in not putting in an appearance to the plaintiff's action; in not putting in his statement of defense; or in not appearing at the trial either personally or by counsel, after having received due notice. Mozley & Whitley.

UNDER. Sometimes used in its literal sense of below in position, beneath, but more frequently in its secondary meaning of "inferior" or "subordinate." Mills v. Stoddard, Mo., 49 U.S. 345, 8 How. 356, 12 L.Ed. 1107; Biordi v. Yanosevich, 93 Pa.Super. 578, 582.

Also according to; as, "under the testimony." Boughan v. State, 193 Ind. 66, 138 N.E. 87.

UNDER AND SUBJECT. Words frequently used in conveyances of land which is subject to a mortgage, to show that the grantee takes subject to such mortgage. See Walker v. Physick, 5 Pa. 203; Lavelle v. Gordon, 15 Mont. 515, 39 P. 740, 27 A.L.R.,N.S., 337, 401.

UNDER CONTROL. This phrase does not necessarily mean the ability to stop instanter under any and all circumstances, an automobile being "under control" within the meaning of the law if it is moving at such a rate, and the mechanism and power under such control, that it can be brought to a stop with a reasonable degree of celerity. Esponette v. Wiseman, 130 Me. 297, 155 A. 650, 653. And motorist is only bound to use that degree of care, caution, and prudence that an ordinarily careful, cautious, and prudent man would have used at the time under same or similar circumstances in operation of said automobile. Gregory v. Suhr, 221 Iowa 1283, 268 N.W. 14, 17. In general, as applied to street cars or railroad trains, the term denotes the control and preparation appropriate to probable emergencies. Lincoln v. Pacific Electric Ry. Co., 33 Cal.App. 83, 164 P. 412, 415; Torantolla v. Kansas City Rys. Co., Mo. App., 226 S.W. 617, 618. It is such control as will enable a train to be stopped promptly if need should arise. Missouri K. & T. Ry. Co. v. Missouri Pac. Ry. Co., 103 Kan. 1, 175 P. 97, 102. It implies the ability to stop within the distance the track is seen to be clear. Fuller v. Oregon-Washington R. & Nav. Co., 93 Or. 160, 181 P. 338, 341.

UNDER HERD. A term conveying the idea that a considerable number of domestic animals are gathered together and held together by herders in constant attendance and in control of their movements from place to place on a public range or within certain areas. Schreiner v. Deep Creek Stock Ass'n, 68 Mont. 104, 217 P. 663, 665.

UNDER THE INFLUENCE OF INTOXICATING LIQUOR. Phrase as used in statutes or ordinances prohibiting the operation of motor vehicle by a party under the influence of intoxicating liquor covers not only all well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging in any degree in intoxicating liquors, and which tends to deprive one of that clearness of intellect and control of himself which he would otherwise possess. Commonwealth v. Long, 131 Pa.Super. 28, 198 A. 474, 477. Any condition where intoxicating liquor has so far affected the nervous system, brain or muscles of the driver as to impair, to an appreciable degree, his ability to operate his automobile in the manner that an ordinary, prudent and cautious man, in full possession of his faculties, using reasonable care, would operate or drive under like conditions. Luellen v. State, 64 Okl.Cr. 382, 81 P.2d 323, 328.

UNDER WAY. Not being at anchor, or made fast to the shore, or aground;—said of vessels subject to the navigation rules embraced in Act June 7, 1897, c. 4, 30 Stat. 96 (33 U.S.C.A. § 154 et seq., 46 U.S.C.A. § 381 note). The George W. Elder, C.C.A.Or., 249 F. 956, 958; Kaseroff v. Petersen, C.C.A.Cal., 136 F.2d 184, 186.

Thus, a vessel lying with her nose against the bank of a stream and holding her position against the current by the movement of her wheel is a vessel under way, and not entitled to the rights of an anchored vessel. The Ruth, 108 C.C.A. 199, 186 F. 87. And a steamer being towed down stream by tugs without any steam on her boilers, except for steering purposes, is nevertheless "under way." The Scandinavia, D.C.N.Y., 11 F.2d 542, 543.

UNDER-CHAMBERLAINS OF THE EXCHEQUER. Two officers who cleaved the tallies written by the clerk of the tallies, and read the same, that the clerk of the pell and comptrollers thereof might see their entries were true. They also made searches for records in the treasury, and had the custody of Domesday Book. Cowell. The office is now abolished.

UNDERCURRENT OR UNDERFLOW OF SURFACE STREAM. Those waters which slowly find their way through sand and gravel constituting bed of a stream, or lands under or immediately adjacent to stream, and are themselves part of surface stream. Maricopa County Municipal Water Conservation Dist. No. 1 v. Southwest Cotton Co., 39 Ariz. 65, 4 P.2d 369, 380.

UNDERFLOW. See Undercurrent.

UNDERGROUND WATERS. See Water, subtitle Subterranean Waters.

UNDERGROWTH. A term applicable to plants growing under or below other greater plants. Clay v. Telegraph Co., 70 Miss. 411, 11 So. 658.

UNDER-LEASE. Where lessee lets premises for less time than period of his unexpired term, Marathon Oil Co. v. Lambert, Tex.Civ.App., 103 S.W. 2d 176, 181. Also the transfer of a part only of the lands, though for the whole term. Fulton v. Stuart, 2 Ohio 216, 15 Am.Dec. 542; *contra,* Cox v. Fenwick, 4 Bibb, Ky., 538.

See, also, that title under main title Lease.

UNDERLIE THE LAW. In Scotch criminal procedure, an accused person, in appearing to take his trial, is said "to compear and underlie the law." Mozley & Whiteley.

UNDER-SHERIFF. An officer who acts directly under the sheriff, and performs all the duties of the sheriff's office, a few only excepted where the personal presence of the high-sheriff is necessary. The sheriff is civilly responsible for the acts or omissions of his under-sheriff. Mozley & Whiteley. See Delfelder v. Teton Land and Investment Co., 46 Wyo. 142, 24 P.2d 702.

A sheriff's deputy, who, being designated by the sheriff as an "under sheriff," becomes his chief deputy with authority by virtue of his appointment to execute all the ordinary duties of the office of sheriff. Shirran v. Dallas, 21 Cal.App. 405, 132 P. 454, 458. A distinction is sometimes made between this officer and a *deputy,* the latter being appointed for a special occasion or purpose, while the former discharges, in general, all the duties required by the sheriff's office.

UNDERSIGNED, THE. The person whose name is signed or the persons whose names are signed at the end of a document; the subscriber or subscribers. Farmers' Exchange Bank of Elvaston v. Sollars, 353 Ill. 224, 187 N.E. 289, 290, 89 A.L.R. 398.

UNDERSTAND. To know; to apprehend the meaning; to appreciate; as, to understand the nature and effect of an act. Western Indemnity Co. v. MacKechnie, Tex.Civ.App., 214 S.W. 456, 460; International-Great Northern R. Co. v. Pence, Tex. Civ.App., 113 S.W.2d 206, 210. To have a full and clear knowledge of; to comprehend. Fox v. Schaeffer, 131 Conn. 439, 41 A.2d 46, 49.

Thus, to invalidate a deed on the ground that the grantor did not understand the nature of the act, the grantor must be incapable of comprehending that the effect of the act would divest him of the title to the land set forth in the deed. Miller v. Folsom, 49 Okl. 74, 149 P. 1185, 1188. As used in connection with the execution of wills and other instruments, the term includes the realization of the practical effects and consequences of the proposed act. Tillman v. Ogren, 99 Misc. 539, 166 N.Y.S. 39, 40.

UNDERSTANDING. In the law of contracts. An agreement. Southern Ry. Co. v. Powell, 124 Va. 65, 97 S.E. 357, 358. An implied agreement resulting from the express terms of another agreement, whether written or oral. United States v. United Shoe Machinery Co., D.C.Mo., 234 F. 127, 148. An informal agreement, or a concurrence as to its terms. Barkow v. Sanger, 47 Wis. 507, 3 N.W. 16. A valid contract engagement of a somewhat informal character. Winslow v. Lumber Co., 32 Minn. 238, 20 N.W. 145. This is a loose and ambiguous term, unless it be accompanied by some expression to show that it constituted a meeting of the minds of parties upon something respecting which they intended to be bound. Camp v. Waring, 25 Conn. 529.

The term may also import simply a wish or hope, as in a will bequeathing property to another with the "understanding" that at the legatee's death, all property derived under the will should be given to the testatrix's sister. Vincent v. Rix, 127 Misc. 639, 217 N.Y.S. 393, 399.

UNDERSTOOD. The phrase "it is understood," when employed as a word of contract in a written agreement, has the same force as the words "it is agreed." Phœnix Iron & Steel Co. v. Wilkoff Co., C.C.A.Ohio, 253 F. 165, 167; Mertz v. Fleming, 185 Wis. 58, 200 N.W. 655, 656.

UNDERTAKE. To take on oneself; to engage in; to enter upon; to take in hand; set about; attempt; as, to undertake a task; a journey; and, specifically, to take upon oneself solemnly or expressly; to lay oneself under obligation or to enter into stipulation; to perform or to execute; to covenant; contract; hence to guarantee; be surety for; promise; to accept or take over as a charge; to accept responsibility for the care of; to engage to look after or attend to; as to undertake a patient or guest. Lowe v. Poole, 235 Ala. 441, 179 So. 536, 540. To endeavor to perform, try, to promise, engage, or agree, assume an obligation. Torelle v. Templeman, 94 Mont. 149, 21 P.2d 60.

UNDERTAKER. One who undertakes (to do something). In a mechanic's lien statute, the word has been held not to include a mere furnisher of material in connection with the erection of the building. In re American Lime Co., D.C.Tenn., 201 F. 433, 435.

One whose business is to prepare the dead for burial and to take the charge and management of funerals. Anderson v. State, 19 Ala.App. 606, 99 So. 778, 779; State v. Whyte, 177 Wis. 541, 188 N.W. 607, 608, 23 A.L.R. 67.

UNDERTAKING. A promise, engagement, or stipulation. An engagement by one of the parties to a contract to the other, as distinguished from the mutual engagement of the parties to each other. 5 East 17; 4 B. & Ald. 595, followed in Alexander v. State, 28 Tex.App. 186, 12 S.W. 595. It does not necessarily imply a consideration. Thompson v. Blanchard, 3 N.Y. 335.

In a somewhat special sense, a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. Sweet.

A promise or security in any form. Code, Iowa, § 48, par. 20.

An official undertaking, such as one by a county clerk or other officer under statutes, unlike an official bond, is not required to be signed by the principal. Fleischner v. Florey, 111 Or. 35, 224 P. 831, 832.

UNDER-TENANT. A tenant under one who is himself a tenant; one who holds by under-lease. See, also, Under-Lease.

UNDERTOOK. Agreed; promised; assumed. This is the technical word to be used in alleging the promise which forms the basis of an action of *assumpsit*. Bacon, Abr. *Assumpsit* (F).

UNDER-TREASURER OF ENGLAND. He who transacted the business of the lord high treasurer.

UNDER-TUTOR. In Louisiana. In every tutorship there shall be an under-tutor, whom it shall be the duty of the judge to appoint at the time letters of tutorship are certified for the tutor. It is the duty of the under-tutor to act for the minor whenever the interest of the minor is in opposition to the interest of the tutor. Civ. Code La. arts. 273, 275.

UNDERWRITE. To insure life or property. See Underwriter.

To insure the sale of corporate bonds or similar securities to the public by agreeing to buy those which are not sold. Busch v. Stromberg-Carlson Tel. Mfg. Co., C.C.A. Mo., 217 F. 328, 330; Stewart v. G. L. Miller & Co., 161 Ga. 919, 132 S.E. 535, 538, 45 A.L.R. 559. To agree to sell bonds, etc., to the public, or to furnish the necessary money for such securities, and to buy those which cannot be sold. Minot v. Burroughs, 223 Mass. 595, 112 N.E. 620, 623; Rauer's Law & Collection Co. v. Harrell, 32 Cal. App. 45, 162 P. 125, 131.

An underwriting contract, aside from its use in insurance, is an agreement, made before corporate shares are brought before the public, that in the event of the public not taking all the shares or the number mentioned in the agreement, the underwriter will take the shares which the public do not take; "underwriting" being a purchase, together with a guaranty of a sale of the bonds. Fraser v. Home Telephone & Telegraph Co., 91 Wash. 253, 157 P. 692, 694; In re Hackett, Hoff and Thiermann, C.C.A.Wis., 70 F.2d 815, 819.

UNDERWRITER. The person who insures another, as in a fire or life policy; the insurer. See Childs v. Firemen's Ins. Co., 66 Minn. 393, 69 N. W. 141, 35 L.R.A. 99. Especially, a person who joins with others in entering into a marine policy of insurance as insurer.

One who underwrites corporate bonds or stocks. Fraser v. Home Telephone & Telegraph Co., 91 Wash. 253, 157 P. 692, 694. One who agrees with others to purchase an entire issue of bonds or other securities, usually at the end of a certain period. By reason of such underwriting, the bonds, etc., obtain a market value or a value as collateral security. See Underwrite.

UNDISCLOSED PRINCIPAL. If, at time of transaction conducted by agent, other party thereto has no notice that agent is acting for a principal, the principal is "undisclosed principal." Dodge v. Blood, 299 Mich. 364, 300 N.W. 121, 123.

UNDISPUTED. Meaning "uncontested," rather than "uncontradicted." Pennsylvania R. Co. v. Stallings, 165 Md. 615, 170 A. 163, 164.

UNDISPUTED FACT. Within the meaning of a statute, an admitted fact, which the court has not deemed sufficiently material to add to the finding, or has inadvertently omitted from it; a fact not found by the court does not become an "undisputed fact," merely because one or more witnesses testify to it without direct contradiction. Dexter Yarn Co. v. American Fabrics Co., 102 Conn. 529, 129 A. 527, 532.

UNDIVIDED PROFITS. Profits which have not in fact been divided or distributed, English & Mersick Co. v. Eaton, D.C.Conn., 299 F. 646, 649; or otherwise used, Douglas v. Edwards, C.C.A.N. Y., 298 F. 229, 237. Current undistributed earnings. Edwards v. Douglas, 46 S.Ct. 85, 89, 269 U. S. 204, 70 L.Ed. 235. Winkelman v. General Motors Corporation, D.C.N.Y., 44 F.Supp. 960, 966. Profits not set aside as surplus or distributed in dividends. First Nat. Bank v. Moon, 102 Kan. 334, 170 P. 33, 34, L.R.A.1918C, 986; Phillips v. U. S., D.C.Pa., 12 F.2d 598, 600.

The terms "surplus" and "undivided profits" have different meanings in banking circles. State ex rel. Payne v. Exchange Bank of Natchitoches, 84 So. 481, 482, 147 La. 25. Surplus, like the capital stock, constitutes the working capital of the bank and is, in addition, a fund for the protection of the depositors. The "undivided profits" constitute a temporary fund changing in size from day to day and carried only until dividend periods when it is distributed to the stockholders or transferred to the permanent surplus. It is the fund from which the expenses and losses of the bank are paid. Sarles v. Scandinavian American Bank, 33 N.D. 40, 156 N.W. 556, 557.

"Surplus" and "undivided profits," as commonly employed in corporate accounting, denote an excess in the aggregate value of the assets of the corporation over the sum of liabilities, including capital stock; "surplus" describing such part of the excess in the value of the corporate assets as is treated by the corporation as part of the permanent capital, while the term "undivided profits" designates such part of the excess as consists of profits neither distributed as dividends nor carried to the surplus account. Willcuts v. Milton Dairy Co., 48 S.Ct. 71, 72, 275 U.S. 215, 72 L.Ed. 247.

UNDIVIDED RIGHT. An undivided right or title, or a title to an undivided portion of an estate, is that owned by one of two or more tenants in common or joint tenants before partition. Held by the same title by two or more persons, whether their rights are equal as to value or quantity, or unequal. See In re Wellington, 16 Pick. (Mass.) 98, 26 Am.Dec. 631.

UNDRES. In old English law. Minors or persons under age not capable of bearing arms. Fleta, l. 1, c. 9; Cowell.

UNDUE. More than necessary; not proper; illegal. Webb v. Superior Court in and for Del Norte County, 28 Cal.App. 391, 152 P. 957, 958. See, also, Elk Hotel Co. v. United Fuel Gas Co., 75 W.Va. 200, 83 S.E. 922, 924, L.R.A.1917E, 970.

It denotes something wrong, according to the standard of morals which the law enforces in relations of men, and in fact illegal, and qualifies the purpose with which influence is exercised or result which it accomplishes. Morris v. Morris, 192 Miss. 518, 6 So.2d 311, 312.

UNDUE INFLUENCE. Any improper or wrongful constraint, machination, or urgency of persuasion whereby the will of a person is overpowered and he is induced to do or forbear an act which he would not do or would do if left to act freely. Powell v. Betchel, 340 Ill. 330, 172 N.E. 765, 768. Influence which deprives person influenced of free

agency or destroys freedom of his will and renders it more the will of another than his own. Conner v. Brown, Del., 3 A.2d 64, 71, 9 W.W.Harr. 529; In re Velladao's Estate, 31 Cal.App.2d 355, 88 P.2d 187, 190.

"Undue influence" is not necessarily physical injury or threat of it, but is a species of duress, or at least often indistinguishable from it. Trigg v. Trigg, 37 N.M. 296, 22 P.2d 119. And although there is no coercion amounting to duress, but transaction is result of moral, social, or domestic force, consciously and designedly exerted on party, peculiarly susceptible to external pressure on account of mental weakness, old age, ignorance, and the like, controlling the free action of the will, and preventing a true consent, equity may relieve against the transaction on the ground of "undue influence." In re Null's Estate, 302 Pa. 64, 153 A. 137, 139. But modest persuasion or arguments addressed to the understanding or the appeal of affection cannot be deemed "undue influence". Calveard v. Reynolds, 281 Ky. 518, 136 S.W.2d 795, 799.

Undue influence consists (1) in the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority, for the purpose of obtaining an unfair advantage over him; (2) in taking an unfair advantage of another's weakness of mind; or (3) in taking a grossly oppressive and unfair advantage of another's necessities or distress. Buchanan v. Prall, 39 N.D. 423, 167 N.W. 488, 489; Dolliver v. Dolliver, 94 Cal. 642, 30 P. 4.

"Undue influence," such as will invalidate a will, must be something which destroys the free agency of the testator at the time when the instrument is made, and which, in effect, substitutes the will of another for that of the testator. It is not sufficient that the testator was influenced by the beneficiaries in the ordinary affairs of life, or that he was surrounded by them and in confidential relations with them at the time of its execution. Mere general influence, not brought to bear on the testamentary act, is not undue influence; but in order to constitute undue influence, it must be used directly to procure the will, and must amount to coercion destroying the free agency of the testator. Mere suspicion that undue influence was brought to bear is not sufficient to justify the setting aside of the will. Myers v. Myers, 130 Okl. 184, 266 P. 452, 455. To constitute "undue influence," justifying denial or revocation of probate of will, testator's mind must have been so controlled or affected by persuasion or pressure, artful or fraudulent contrivances, or by influences of persons in close confidential relations with him, that he is not left to act intelligently, understandingly, and voluntarily, but subject to will or purposes of another. In re Starr's Estate, 125 Fla. 536, 170 So. 620. Solicitation, importunity, argument, advice, and persuasion are not "undue influence" sufficient to avoid a contract or will. Influence obtained by persuasion and argument, or gained by kindness and affection, is not prohibited, where no imposition or fraud is practiced, and where the person's will is not overcome. Barron v. Reardon, 137 Md. 308, 113 A. 283, 285; Stump v. Sturn, C.C.A.W.Va., 254 F. 535, 538.

Undue influence at elections occurs where any one interferes with the free exercise of a voter's franchise, by violence, intimidation, or otherwise. It is a misdemeanor. 1 Russ.Crimes, 321; Steph. Crim. Dig. 79.

UNEARNED INCREMENT. Value due to no labor or expenditure on the part of an owner but to natural causes making an increased demand for it, such as increase of population or the general progress of society. Miller v. Huntington & Ohio Bridge Co., 123 W.Va. 320, 15 S.E.2d 687, 699.

UNEDUCATED. Not synonymous with illiterate. A man might be able to read and write, carry on a business correspondence, understand business transactions, and be bound by all his contracts, and yet be an "uneducated" man. Baker v. Patton, 144 Ga. 502, 87 S.E. 659, 660.

UNEMPLOYMENT. State of being not employed, lack of employment. A. J. Meyer & Co. v. Unemployment Compensation Commission, 348 Mo. 147, 152 S.W.2d 184, 189.

UNEQUAL. Not uniform. Los Angeles County v. Ransohoff, 24 Cal.App.2d 238, 74 P.2d 828, 830. Ill-balanced; uneven; partial; unfair;—not synonymous with inappropriate, which means unsuitable, unfit, or improper. Lane v. St. Denis Catholic Church of Benton, Mo.App., 274 S.W. 1103, 1106.

UNEQUIVOCAL. Clear; plain; capable of being understood in only one way, or as clearly demonstrated; free from uncertainty, or without doubt; and, when used with reference to the burden of proof, it implies proof of the highest possible character and it imports proof of the nature of mathematical certainty. Berry v. Maywood Mut. Water Co. No. 1, 11 Cal.App.2d 479, 53 P.2d 1032; Molyneux v. Twin Falls Canal Co., 54 Idaho 619, 35 P.2d 651, 656, 94 A.L.R. 1264.

UNERRING. Incapable of error or failure; certain; sure; infallible. Gardner v. State, 27 Wyo. 316, 196 P. 750, 752, 15 A.L.R. 1040.

UNETHICAL. Not ethical; hence, colloquially, not according to business or professional standards. Kraushaar v. La Vin, 181 Misc. 508, 42 N.Y.S.2d 857, 859.

UNETHICAL CONDUCT. Authorizing recovery of broker's commission for sale completed by another broker means a purpose to obtain profits from broker's exertions without payment, and exists where employer revokes the broker's authority and makes the sale through other means when the broker has performed all he has undertaken or is plainly or evidently approaching success. Kacavas v. Diamond, 303 Mass. 88, 20 N.E. 2d 936, 938.

UNEXCEPTIONABLE. Without any fault; not subject to any objection or criticism. Washam v. Beaty, 210 Ala. 635, 99 So. 163, 167.

UNEXPECTED. Not expected, coming without warning, sudden. Bachus v. Ronnebaum, 98 Ind. App. 603, 186 N.E. 386, 387.

UNEXPIRED TERM. Remainder of a period prescribed by law after a portion of such time has passed, and phrase is not synonymous with "vacancy." State ex rel. Sanchez v. Dixon, La.App., 4 So.2d 591, 596.

UNFAIR. In the labor movement, unfriendly to organized labor; refusing to recognize its rules and regulations;—applied particularly to employers, *e. g.*, one who refuses to employ members of a trade union. Steffes v. Motion Picture Mach. Operators' Union, 136 Minn. 200, 161 N.W. 524. A characterization of an employer who refuses to conduct his business in manner desired by union. John R. Thompson Co. v. Delicatessen and Cafeteria Workers Union Local 410, 126 N.J. Eq. 119, 8 A.2d 130, 133; Blossom Dairy Co. v.

International Brotherhood of Teamsters, 125 W. Va. 165, 23 S.E.2d 645, 650.

UNFAIR COMPETITION. A term which may be applied generally to all dishonest or fraudulent rivalry in trade and commerce, but is particularly applied in the courts of equity (where it may be restrained by injunction) to the practice of endeavoring to substitute one's own goods or products in the markets for those of another, having an established reputation and extensive sale, by means of imitating or counterfeiting the name, title, size, shape, or distinctive peculiarities of the article, or the shape, color, label, wrapper, or general appearance of the package, or other such simulations, the imitation being carried far enough to mislead the general public or deceive an unwary purchaser, and yet not amounting to an absolute counterfeit or to the infringement of a trade-mark or trade-name. Called in France *"concurrence deloyale"* and in Germany *"unlauterer Wettbewerb."* Reddaway v. Banham, [1896] App.Cas. 199; Singer Mfg. Co. v. June Mfg. Co., 16 S.Ct. 1002, 163 U.S. 169, 41 L.Ed. 118; Dennison Mfg. Co. v. Thomas Mfg. Co., C.C.Del., 94 F. 651; Sterling Remedy Co. v. Eureka Chemical Co., 25 C.C.A. 314, 80 F. 108.

The simulation by one person of the name, materials, color scheme, symbols, patterns, or devices employed by another for purpose of deceiving the public, or substitution of goods, or wares of one person for those of another, thus falsely inducing purchase of goods and obtaining benefits belonging to competitor. Mathews Conveyor Co. v. Palmer-Bee Co., C.C.A.Mich., 135 F.2d 73, 84; Esskay Art Galleries v. Gibbs, 205 Ark. 1157, 172 S.W.2d 924, 926. American Fork & Hoe Co. v. Stampit Corporation, C.C.A.Ohio, 125 F.2d 472, 474, 475. Passing off, or attempting to pass off upon the public the goods or business of one person as the goods or business of another. Westminister Laundry Co. v. Hesse Envelope Co., 174 Mo.App. 238, 156 S.W. 767, 768; Sayre v. McGill Ticket Punch Co., D.C.Ill., 200 F. 771, 773; Socony-Vacuum Oil Co. v. Oil City Refiners, C.C.A.Ohio, 136 F.2d 470, 474. The selling of another's product as one's own. A. L. A. Schechter Poultry Corporation v. United States, N.Y., 55 S.Ct. 837, 844, 295 U.S. 495, 79 L.Ed. 1570, 97 A.L.R. 947. The sale of goods by means which shock judicial sensibilities. Margarete Steiff v. Bing, D.C.N.Y., 215 F. 204, 206. See, however, Federal Trade Commission v. Gratz, 40 S.Ct. 572, 575, 253 U.S. 421, 64 L.Ed. 993. Also deceitful advertising which injures a competitor, bribery of employees, secret rebates and concessions, and other devices of unfair trade. In re Northern Pigment Co., Cust. & Pat. App., 71 F.2d 447, 453.

Fraudulent intent is a necessary ingredient of unfair competition. Queen Mfg. Co. v. Isaac Ginsberg & Bros., C.C.A.Mo., 25 F.2d 284, 288.

The equitable doctrine of "unfair competition" is not confined to cases of actual market competition between similar products of different parties, but extends to all cases in which one party fraudulently seeks to sell his goods as those of another. Wisconsin Electric Co. v. Dumore Co., C.C.A.Ohio, 35 F.2d 555, 557.

Test of "unfair competition" is, not whether distinction between two competing products can be recognized when placed alongside each other, but whether, when the two products are not viewed together, a purchaser of ordinary prudence would be induced by reason of the marked resemblance in general effect to mistake one for the other despite differences in matters of detail. Ralston Purina Co. v. Checker Food Products Co., Mo.App., 80 S.W.2d 717, 719, 720.

UNFAIR HEARING. Where the defect, or the practice complained of, was such as might have led to a denial of justice, or where there was absent one of the elements deemed essential to due process. Ex parte Bridges, D.C.Cal., 49 F.Supp. 292, 302, 306; Bufalino v. Irvine, C.C.A.Kan., 103 F.2d 830, 832; Kielema v. Crossman, C.C.A.Tex., 103 F.2d 292, 293.

UNFAIR LABOR PRACTICE. Within National Labor Relations Act for an employer: (1) To interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. (4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act. (5) To refuse to bargain collectively with the representatives of his employees. National Labor Relations Act, §§ 7, 8, 29 U.S.C.A. §§ 102.1 et seq., 157, 158.

The following has been held to be "unfair labor practice" under National Relations Act:

Failure to re-employ striking employees. Western Cartridge Co. v. National Labor Relations Board, C.C.A.7, 139 F.2d 855, 858. Refusal of employer to reinstate union members who were evicted from plant unless members would withdraw from union. National Labor Relations Board v. J. G. Boswell Co., C.C.A.9, 136 F.2d 585, 590, 592, 596. Refusal of employer to bargain collectively in good faith. National Labor Relations Board v. Griswold Mfg. Co., C.C.A.3, 106 F.2d 713, 724; National Labor Relations Board v. Somerset Shoe Co., C.C.A.1, 111 F.2d 681, 688, 689. Threats by employer to close if union gained a foothold in plant. National Labor Relations Board v. J. G. Boswell Co., C.C.A.9, 136 F.2d 585, 590, 592, 596. Anti-union statements made by employer's supervisory employees during and after strike, together with statement to one of the strikers that he would never get a job in that town anymore. N. L. R. B. v. Indiana Desk Co., C.C.A.7, 149 F.2d 987, 992, 996. Refusal of employer to permit posting of a notice that employer would not discriminate against employees who wished to join union. National Labor Relations Board v. J. G. Boswell Co., C.C.A.9, 136 F.2d 585, 590, 592, 596. Discharge of an employee because of membership in or activity on behalf of a labor organization. National Labor Relations Board v. Newark Morning Ledger, C.C.A. 3, 120 F.2d 262, 268; National Labor Relations Board v. Bank of America Trust & Savings Ass'n, C.C.A.9, 130 F.2d 624. 628, 629. Employer's interference with and his dominating formation and administration of new labor organization. National Labor Relations Board v. Swift & Co., C.C. A.8, 116 F.2d 143, 145 146; National Labor Relations Board v. Blossom Products Corporation, C.C.A.3, 121 F.2d 260, 262; National Labor Relations Board v. Stackpole Carbon Co., C.C.A.3, 105 F.2d 167, 173, 175. Refusal of employer which had refused to bargain with union which had been certified as the exclusive bargaining agent. National Labor

Relations Board v. John Engelhorn & Sons, C.C.A.3, 134 F.2d 553, 558. Assault by persons employed by manufacturer upon union organizers or sympathizers. National Labor Relations Board v. Ford Motor Co., C.C.A.6, 114 F.2d 905, 911, 915. Discharge of employee because he would not become member of union in accordance with closed shop agreement. Virginia Electric & Power Co. v. National Labor Relations Board, C.C.A.4, 132 F.2d 390, 396.

UNFAIR METHODS OF COMPETITION. This phrase within Federal Trade Commission Act has broader meaning than common-law term "unfair competition," but its scope cannot be precisely defined, and what constitutes "unfair methods of competition" must be determined in particular instances, upon evidence, in light of particular competitive conditions and of what is found to be a specific and substantial public interest. Federal Trade Commission Act § 5, 15 U.S.C.A. § 45. A.L.A. Schechter Poultry Corporation v. United States, N.Y., 55 S.Ct. 837, 844, 295 U.S. 495, 79 L.Ed. 1570, 97 A.L.R. 947.

The term though not defined by the statute is clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade. In re Amtorg Trading Corporation, Cust & Pat.App., 75 F.2d 826, 830. But a method was said to be an unfair method if it does not leave to each actual or potential competitor a fair opportunity for play of his contending force engendered by an honest desire for gain. California Rice Industry v. Federal Trade Commission, C.C.A.9, 102 F.2d 716, 721.

UNFAIR TRADE, DOCTRINE OF. The doctrine that one person has no right to sell goods as goods of another, nor to do other business as the business of another. Foster Canning Co. v. Lardan Packing Co., Sup., 17 N.Y.S.2d 583, 585.

UNFAITHFUL. Characterized by bad faith;—not synonymous with "illegal," which means unlawful or contrary to law, nor with "improper," which, as applied to conduct, implies such conduct as a man of ordinary and reasonable prudence would not, under the circumstances, have been guilty of. State v. American Surety Co. of New York, 26 Idaho 652, 145 P. 1097, 1104, Ann.Cas. 1916E, 209.

UNFINISHED. Not completed; not brought to an end; imperfect; the last effort, as a final touch is given to a work. Bell & Graddy v. O'Brien, Tex. Civ.App., 113 S.W.2d 560, 562.

UNFIT. Unsuitable, incompetent, not adapted or qualified for a particular use or service, having no fitness. Morse v. Caldwell, 55 Ga.App. 804, 191 S.E. 479, 488.

UNFIT FOR USE AS A BEVERAGE. This language in a statute is not necessarily applicable to an alcoholic compound or preparation merely because it may be drunk in sufficient quantities to produce death. Thamann v. Merritt, 111 Neb. 639, 197 N.W. 413, 414.

UNFORESEEN. Not foreseen, not expected. Pampel v. Board of Examiners, 114 Mont. 380, 136 P.2d 991, 994.

UNFORESEEN CAUSE. With reference to causes excusing delay, under the Workmen's Compensation Act, in giving notice of injury, a cause which could not have been reasonably foreseen as likely to arise or occur, and yet is of such a nature as to have substantially interfered with the giving of the notice. Wardwell's Case, 121 Me. 216, 116 A. 447, 448. A reasonable cause. Donahue v. R. A. Sherman's Sons Co., 39 R.I. 373, 98 A. 109, L.R.A. 1917A, 76.

UNFORESEEN EVENT. In the civil law. A vis major; an uncontrollable force;—so used in Civ. Code La. art. 2697, relating to the termination of a lease by the total destruction of the property. Knapp v. Guerin, 144 La. 754, 81 So. 302, 305.

UNGELD. In Saxon law. An outlaw; a person whose murder required no composition to be made, or *weregeld* to be paid, by his slayer.

UNHARMED. Within provision of Federal Kidnapping Act that death sentence shall not be imposed if kidnapped person has been liberated unharmed, means uninjured. Federal Kidnapping Act § 1 et seq., as amended, 18 U.S.C.A. § 1201 et seq. Robinson v. U. S., Ky., 65 S.Ct. 666, 668, 324 U.S. 282, 89 L.Ed. 944.

UNIATE CHURCH. One united with Rome and subject to control by local ecclesiastical authority representing the Vatican. Drozda v. Bassos, 260 App.Div. 408, 23 N.Y.S.2d 544, 547.

UNICA TAXATIO. The obsolete language of a special award of *venire*, where, of several defendants, one pleads, and one lets judgment go by default, whereby the jury, who are to try and assess damages on the issue, are also to assess damages against the defendant suffering judgment by default. Wharton.

UNIFACTORAL OBLIGATION. See Contract.

UNIFIED. Made one. Adams v. Salt River Valley Water Users' Ass'n, 53 Ariz. 374, 89 P.2d 1060, 1071.

UNIFORM, *n.* Within the meaning of an ordinance requiring a traction company to give free transportation to members of the police force and fire department when in uniform, a plain clothes man, whose only prescribed uniform was a metal badge which might be worn concealed, while wearing such badge was "in uniform." Montgomery Light & Traction Co. v. Avant, 202 Ala. 404, 80 So. 497, 498, 3 A.L.R. 384.

UNIFORM, *adj.* Conforming to one rule, mode, or unvarying standard; not different at different times or places; applicable to all places or divisions of a country. People v. Vickroy, 266 Ill. 384, 107 N.E. 638, 640. Equable; applying alike to all within a class. Bufkin v. Mitchell, 106 Miss. 253, 63 So. 458, 459, 50 L.R.A.,N.S., 428.

A statute is general and uniform in its operation when it operates equally upon all persons who are brought within the relations and circumstances provided for, McAunich v. Mississippi & M. R. Co., 20 Iowa, 342. Stevens v. Village of

Nashwauk, 161 Minn. 20, 200 N.W. 927, 929, when all persons under the same conditions and in the same circumstances are treated alike, and classification is reasonable and naturally inherent in the subject-matter. Kelly v. Finney, 207 Ind. 557, 194 N.E. 157, 166.

The words "general" and "uniform" as applied to laws have a meaning antithetical to special or discriminatory laws. Ex parte Nowak, 184 Cal. 701, 195 P. 402, 404. The term "uniform," however, does not mean universal. Watson v. Greely, 67 Cal.App. 328, 227 P. 664, 670.

The burdens of taxation, to be uniform, must have the essential of equality, and must bear alike upon all the property within the limits of the unit wherein it is lawful to levy taxes for a purpose, whether that unit be the state, county, or a municipality. Lang v. Commonwealth, 190 Ky. 29, 226 S.W. 379, 382. See, also, Jordan v. Duval County, 68 Fla. 48, 66 So. 298, 299. And requirement is met when tax is equal on all persons belonging to descibed class on which tax is imposed. Hilton v. Harris, 207 N.C. 465, 177 S.E. 411.

With reference to locality, a tax is "uniform" when it operates with equal force and effect in every place where the subject of it is found, and with reference to classification, it is uniform when it operates without distinction or discrimination upon all persons composing the described class. Hart v. Board of Comrs. of Burke County, 192 N.C. 161, 134 S.E. 403, 405; City of Cape Girardeau v. Fred A. Groves Motor Co., 346 Mo. 762, 142 S.W.2d 1040, 1042.

UNIFORM LAWS. A considerable number of laws have been approved by the National Conference of Commissioners on Uniform State Laws, and many of them have been adopted in one or more jurisdictions in the United States and its possessions. Among the more important of these laws are the Uniform Negotiable Instruments Act which has been adopted in all the states as well as in the District of Columbia, Alaska, Hawaii, the Philippine Islands, and Porto Rico; the Uniform Sales Act, which in 1950 had been adopted in 37 jurisdictions; the Uniform Bills of Lading Act, in 32 jurisdictions; the Uniform Stock Transfer Act, in all the states as well as in the District of Columbia, Alaska and Hawaii; and the Uniform Partnership Act, in 32. Others which may be mentioned include the Uniform Warehouse Receipts, Declaratory Judgments, Fiduciaries, Fraudulent Conveyance, Desertion and Nonsupport, Veterans' Guardianship, Conditional Sales and Limited Partnership Acts.

UNIFORMITY. Conformity to one pattern; sameness. Naill v. Order of United Commercial Travelers of America, 103 Okl. 179, 229 P. 833, 837.

"Uniformity of operation" of laws does not require "universality of operation." The former term relates to similarity of conditions affecting subjects or localities of the state that are appropriately classified. The latter term relates to the whole and every part of the state. State v. Daniel, 87 Fla. 270, 99 So. 804, 809.

The constitutional requirement of "uniformity" is complied with when the law operates uniformly upon all persons brought within the relations and circumstances provided by it. Abbott v. Commissioners of Roads and Revenues of Fulton County, 160 Ga. 657, 129 S.E. 38, 41.

Uniformity in taxation implies equality in the burden of taxation, which cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation. Further, the uniformity must be coextensive with the territory to which it applies. And it must be extended to all property subject to taxation, so that all property may be taxed alike and equally. Exchange Bank v. Hines, 3 Ohio St. 15. And see Edye v. Robertson, 5 S.Ct. 247, 112 U.S. 580, 28 L.Ed. 798; People v. Auditor General, 7 Mich. 90; Hilger v. Moore, 56 Mont. 146, 182 P. 477, 481. Department of Justice v. A. Overholt and Co., 331 Pa. 182, 200 A. 849, 853.

The rule of "uniformity" does not require that all subjects be taxed, nor taxed alike, but is complied with when the tax is levied equally and uniformly on all subjects of the same class and kind. Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720, 729. The uniformity required in taxation is limited to a uniformity in rate, assessment, and valuation of the particular tax involved, and has no reference to a uniformity of the sum total of taxes which a citizen is required to pay. King v. Sullivan County, 128 Tenn. 393, 160 S.W. 847, 848, and does not require uniformity of collection, but only uniformity of assessment. Mississippi State Tax Commission v. Flora Drug Co., 167 Miss. 1, 148 So. 373, 378.

Uniformity in taxation means equality in burden and not equality in method. Ewert v. Taylor, 38 S.D. 124, 160 N. W. 797, 803.

See, also, "Uniform, *adj.*"

UNIFORMITY, ACT OF. An act which regulates the terms of membership in the Church of England and the colleges of Oxford and Cambridge, (St. 13 & 14 Car. II. c. 4.) See St. 9 & 10 Vict. c. 59. The act of uniformity has been amended by the St. 35 & 36 Vict. c. 35, which *inter alia* provides a shortened form of morning and evening prayer. Wharton.

UNIFORMITY OF PROCESS ACT. The English statute of 2 Wm. IV. c. 39, establishing a uniform process for the commencement of actions in all the courts of law at Westminster. 3 Steph. Comm. 566. The improved system thus established was more fully amended by the Procedure Acts of 1852, 1854, and 1860, and by the Judicature Acts of 1873 and 1875.

UNIFY. To cause to be one; to make into a unit; to unite; to become one; to consolidate. Adams v. Salt River Valley Water Users' Ass'n, 53 Ariz. 374, 89 P.2d 1060, 1071.

UNIGENITURE. The state of being the only begotten.

UNILATERAL. One-sided; ex parte; having relation to only one of two or more persons or things.

UNILATERAL CONTRACT. See Contract.

UNILATERAL MISTAKE. A mistake or misunderstanding as to the terms or effect of a contract, made or entertained by one of the parties to it but not by the other. Green v. Stone, 54 N.J. Eq. 387, 34 A. 1099, 55 Am.St.Rep. 577; Kant v. Atlanta, B. & A. R. Co., 189 Ala. 48, 66 So. 598, 599.

UNILATERAL RECORD. Records are unilateral when offered to show a particular fact, as a *prima facie* case, either for or against a stranger. Colligan v. Cooney, 107 Tenn. 214, 64 S.W. 31.

UNIMPEACHABLE WITNESS. Within a statute requiring proof of a holographic will by the unimpeachable evidence of at least three disinterested witnesses to the testator's handwriting, one whom the jury finds to speak truthfully and whose conclusion they find to be correct, notwithstanding the presence of other evidence contradicting him. Sneed v. Reynolds, 166 Ark. 581, 266 S.W. 686, 689; Murphy v. Murphy, 144 Ark. 429, 222 S.W. 721, 723.

UNIMPROVED LAND. A statutory term which includes lands, once improved, that have reverted to a state of nature, as well as lands that have never been improved. Moore v. Morris, 118 Ark. 516, 177 S.W. 6, 8.

UNINCLOSED PLACE. A place not entirely inclosed, an "inclosed" place being a place inclosed on all sides by some sort of material. Ex parte Wisner, 32 Cal.App. 637, 163 P. 868, 869.

UNINFECTED. Untainted or uncontaminated, not affected unfavorably, not impregnated or permeated with that which is bad or harmful. Leonardi v. A. Habermann Provision Co., 143 Ohio St. 623, 56 N.E.2d 232, 237.

UNINTELLIGIBLE. That which cannot be understood.

UNIO. Lat. In canon law. A consolidation of two churches into one. Cowell.

UNIO PROLIUM. Lat. Uniting of offspring. A method of adoption, chiefly used in Germany, by which step-children (on either or both sides of the house) are made equal, in respect to the right of succession, with the children who spring from the marriage of the two contracting parties. See Heinecc. Elem. § 188.

UNION. A league; a federation; an unincorporated association of persons for a common purpose; as, a trade or labor union. Hughes v. State, 109 Ark. 403, 160 S.W. 209. A joinder of separate entities. State ex rel. Dawson v. Dinwiddie, 186 Okl. 63, 95 P.2d 867, 869.

Ecclesiastical Law

Two or more benefices which have been united into one benefice. Sweet.

English Poor-Law

Two or more parishes which have been consolidated for the better administration of the poor-law therein.

Public Law

A popular term in America for the United States; also, in Great Britain, for the consolidated governments of England and Scotland, or for the political tie between Great Britain and Ireland.

Scotch Law

A "clause of union" is a clause in a feoffment by which two estates, separated or not adjacent, are united as one, for the purpose of making a single seisin suffice for both.

UNION-JACK. The national flag of Great Britain and Ireland, which combines the banner of St. Patrick with the crosses of St. George and St. Andrew. The word "jack" is most probably derived from the surcoat, charged with a red cross, anciently used by the English soldiery. This appears to have been called a "jacque," whence the word "jacket," anciently written "jacquit." Some, however, without a shadow of evidence, derive the word from "*Jacques*," the first alteration having been made in the reign of King James I. Wharton.

UNION MORTGAGE CLAUSE. A clause, as in a fire policy (together with the rider making the loss, if any, payable to the mortgagee), which provides that if the policy is made payable to a mortgagee of the insured real estate, no act or default of any person other than such mortgagee, or his agents or those claiming under him, shall affect his right to recover in case of loss on such real estate. Bankers' Joint Stock Land Bank of Milwaukee, Wis., v. St. Paul Fire & Marine Ins. Co., 158 Minn. 363, 197 N.W. 749. Prudential Ins. Co. of America v. German Mut. Fire Ins. Ass'n of Lohman, 231 Mo.App. 699, 105 S.W.2d 1001.

Such clause creates independent contract between insurer and mortgagee. Conard v. Moreland, 230 Iowa 520, 298 N.W. 628, 629. And is distinguished from "open mortgage clause" in that latter clause simply provides that policy is payable to mortgagee as his interest may appear. Prudential Ins. Co. of America v. German Mut. Fire Ins. Ass'n of Lohman, 231 Mo.App. 699, 105 S.W.2d 1001. And mortgagee under such latter clause is merely an appointee to receive fund recoverable in case of loss to extent of his interest. Capital Fire Ins. Co. of Cal. v. Langhorne, C.C.A.Minn., 146 F.2d 237, 241.

UNION OF CHURCHES. A combining and consolidating of two churches into one. Also it is when one church is made subject to another, and one man is rector of both; and where a conventual church is made a cathedral. Tomlins.

UNION SHOP. One in which none but members of labor union are engaged as workmen. People v. Fisher, 3 N.Y.S. 786, 788, 50 Hun, 552.

It was also said that "union shop" exists where employer is permitted to employ a non-union worker, but such worker is required to join the union as a requisite to his continuing work. And that it is distinguished from "closed shop" where the worker must be a member of the union as a condition precedent to his employment. Miners in General Group v. Hix, 123 W.Va. 637, 17 S.E.2d 810, 813.

UNION SOLDIERS. Those who fought in the American Civil War in support of the Union, in contradistinction to Confederate soldiers, who fought for the establishment of the new confederacy. Keely v. Board of Sup'rs of Dubuque County, 158 Iowa 205, 139 N.W. 473, 474.

UNIT. A single thing of any kind. State ex rel. S. Monroe & Son Co. v. Tracy, 129 Ohio St. 550, 196 N.E. 650. A term sometimes used in the sense of a share, as in an oil syndicate, Chew v. U. S., C.C. A.Ark., 9 F.2d 348, 351, or as equivalent to an investment security. State v. Summerland, 150 Minn. 266, 185 N.W. 255, 256.

UNIT CF PRODUCTION. The "unit of production" method of determining the taxable net in-

come or profit in the oil or gas business is accomplished by a system of accounting by which is ascertained, as nearly as science will permit, the total amount of recoverable oil in the property, and to each barrel of this oil is assigned its part of the capital investment, and from the sale price of each barrel produced and sold there is deducted the expenses of producing it, and its proportion of the capital investment, leaving the balance as profit, and thus, when the property is exhausted, the operator has received back his capital and expenses, and accounted for his net income or loss. Carter v. Phillips, 88 Okl. 202, 212 P. 747, 750.

UNIT RULE. A method of valuing securities by multiplying the total number of shares held by the sale price of one share sold on a licensed stock exchange, ignoring all other facts regarding value. Citizens Fidelity Bank & Trust Co. v. Reeves, Ky., 259 S.W.2d 432, 434.

UNITAS PERSONARUM. Lat. The unity of persons, as that between husband and wife, or ancestor and heir.

UNITE. To join in an act, to concur, to act in concert. Bowling v. Wilkerson, D.C.Ky., 19 F. Supp. 584, 587.

UNITED GREEK CATHOLIC CHURCH. All the churches of the Byzantine Rite in communion with the See of Rome. The term is synonymous with "Uniate Greek Catholic Church" or "Uniat Greek Catholic Church," and signifies an ecclesiastical body in union with the Roman Catholic Church and acknowledging the primacy and supremacy of the pope. Morris v. Featro, 340 Pa. 354, 17 A.2d 403, 405.

UNITED IN INTEREST. A statutory term applicable to codefendants only when they are similarly interested in and will be similarly affected by the determination of the issues involved in the action; McCord v. McCord, 104 Ohio St. 274, 135 N.E. 548, 549; *e. g.*, joint obligors upon a guaranty; Columbia Graphophone Co. v. Slawson, 100 Ohio St. 473, 126 N.E. 890, 891.

UNITED KINGDOM OF GREAT BRITAIN AND IRELAND. The official title of the kingdom composed of England, Scotland, Ireland, and Wales, and including the colonies and possessions beyond the seas, under the act of January 1, 1801, effecting the union betwen Ireland and Great Britain.

UNITED NATIONS. An organization started by the allied powers in World War II for the stated purposes of preventing war, providing justice and promoting welfare and human rights of peoples. It consists of a Security Council and a General Assembly and subordinate agencies.

UNITED STATES. This term has several meanings. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, it may designate territory over which sovereignty of United States extends, or it may be collective name of the states which are united by and under the Constitution. Hooven & Allison Co. v. Evatt, U. S. Ohio, 65 S.Ct. 870, 880, 324 U.S. 652, 89 L.Ed. 1252.

UNITED STATES BONDS. Obligations for payment of money which have been at various times issued by the government of the United States.

UNITED STATES COMMISSIONER. Whose powers in federal matters, are in most respects the same as those of justices of the peace in felony offenses against laws of state, is not a judge or court, and does not hold court, but is an adjunct of court, possessing independent, though subordinate, judicial powers of his own. U. S. v. Napela, D.C.N.Y., 28 F.2d 898, 899.

UNITED STATES COURTS. Except in the case of impeachments the judicial power of the United States is vested by the Constitution in a supreme court and such other inferior courts as may be from time to time established by congress. All the judges are appointed by the president, with the advice and consent of the senate, to hold office during good behavior, and their compensation cannot be diminished during their terms of office. The judges, other than those of the supreme court, are circuit judges and district judges. The circuit judges compose the courts of appeals and the district judges hold the district courts, and also at times sit in the circuit courts of appeal. For a detailed statement of the territorial boundaries of the several districts and divisions of districts, see 28 U.S.C.A. § 81 et seq. and various special acts.

It shall be the duty of the district court of each judicial district to appoint such number of persons, to be known as United States commissioners, at such places in the district as may be designated by the district court. Rev.St.U.S. § 627 (28 USCA § 631). Austill v. United States, 58 Ct.Cl. 232; United States v. Maresca, D.C.N.Y., 266 F. 713.

In statutes, the words "court of the district", Prieto v. U. S. Shipping Board Emergency Fleet Corporation, 117 Misc. 703, 193 N.Y.S. 342, and "courts of the United States," are commonly deemed to refer to federal courts and not to state courts. General Inv. Co. v. Lake Shore & M. S. Ry. Co., C.C.A.Ohio, 269 F. 235, 237.

UNITED STATES CURRENCY. Commonly understood to include every form of currency authorized by the United States government, whether issued directly by it or under its authority. Appel v. State, 28 Ariz. 416, 237 P. 190, 191.

UNITED STATES NOTES. Promissory notes, resembling bank-notes, issued by the government of the United States.

UNITED STATES OFFICER. Usually and strictly, in United States statutes, a person appointed in the manner declared under Const. art. 2, § 2, McGrath v. U. S., C.C.A.N.Y., 275 F. 294, 300, providing for the appointment of officers, either by the President and the Senate, the President alone, the courts of law, or the heads of departments, Steele v. U. S., 45 S.Ct. 417, 418, 267 U.S. 505, 69 L.Ed. 761. Dropps v. U. S., C.C.A.Minn., 34 F.2d 15, 17.

UNITY. In the law of estates. The peculiar characteristic of an estate held by several in joint

tenancy, and which is fourfold, viz., unity of interest, unity of title, unity of time, and unity of possession. In other words, joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. 2 Bl. Comm. 180.

UNITY OF INTEREST. Required in case of joint tenancy means that interests must accrue by one and same conveyance. Hernandez v. Becker, C.C. A.N.M., 54 F.2d 542, 547. It also signifies that no one of joint tenants can have a greater interest in the property than each of the others, while, in the case of tenants in common, one of them may have a larger share than any of the others. Williams, Real Prop. 134, 139.

UNITY OF POSSESSION. Joint possession of two rights by several titles. As if I take a lease of land from a person at a certain rent, and afterwards I buy the fee-simple of such land, by this I acquire unity of possession, by which the lease is extinguished. Cowell; Brown. It is also one of the essential properties of a joint estate, requiring that the joint tenants must hold the same undivided possession of the whole and enjoy same rights until death of one. Hernandez v. Becker, C.C.A.N.M., 54 F.2d 542, 547.

UNITY OF SEISIN. Where a person seised of land which is subject to an easement, *profit à prendre*, or similar right, also becomes seised of the land to which the easement or other right is annexed. Sweet.

UNITY OF TIME. One of the essential properties of a joint estate; the estates of the tenants being vested at one and the same period. 2 Bl. Comm. 181; Hernandez v. Becker, C.C.A.N.M., 54 F.2d 542, 547.

UNITY OF TITLE. Applied to joint tenants, signifies that they hold their property by one and the same title, while tenants in common may take property by several titles. Williams, Real Prop. 134.

Legal requirements of easement of "right of way of necessity" are unity of title, by which is meant that owner of dominant estate must show that his land and that of owner of servient estate once belonged to same person, severance of title, and necessity. Brasington v. Williams, 143 S.C. 223, 141 S.E. 375, 382.

UNIUS OMNINO TESTIS RESPONSIO NON AUDIATUR. The answer of one witness shall not be heard at all; the testimony of a single witness shall not be admitted under any circumstances. A maxim of the civil and canon law. Cod. 4, 20, 9; 3 Bl. Comm. 370; Best, Ev. p. 426, § 390, and note.

UNIUSCUJUSQUE CONTRACTUS INITIUM SPECTANDUM EST, ET CAUSA. The commencement and cause of every contract are to be regarded. Dig. 17, 1, 8; Story, Bailm. § 56.

UNIVERSAL. Having relation to the whole or an entirety; pertaining to all without exception; a term more extensive than "general," which latter may admit of exceptions. See Blair v. Howell, 68 Iowa, 619, 28 N.W. 199; Koen v. State, 35 Neb. 676, 53 N.W. 595, 17 L.R.A. 821.

UNIVERSAL AGENT. One who is appointed to do all the acts which the principal can personally do, and which he may lawfully delegate the power to another to do. Story, Ag. 18; Baldwin v. Tucker, 112 Ky. 282, 65 S.W. 841, 57 L.R.A. 451.

UNIVERSAL LEGACY. See Legacy.

UNIVERSAL PARTNERSHIP. See Partnership.

UNIVERSAL REPRESENTATION. In Scotch law. A term applied to the representation by an heir of his ancestor. Bell.

UNIVERSAL SUCCESSION. In the civil law. Succession to the entire estate of another, living or dead, though generally the latter, importing succession to the entire property of the predecessor as a juridical entirety, that is, to all his active as well as passive legal relations. Mackeld. Rom. Law, § 649.

UNIVERSALIA SUNT NOTIORA SINGULARIBUS. 2 Rolle, 294. Things universal are better known than things particular.

UNIVERSITAS. Lat. In the civil law. A corporation aggregate. Dig. 3, 4, 7. Literally, a whole formed out of many individuals. 1 Bl. Comm. 469.

UNIVERSITAS FACTI. In the civil law. A plurality of corporeal things of the same kind, which are regarded as a whole; *e. g.*, a herd of cattle, a stock of goods. Mackeld. Rom. Law, § 162.

UNIVERSITAS JURIS. In the civil law. A quantity of things of all sorts, corporeal as well as incorporeal, which, taken together, are regarded as a whole; *e. g.*, an inheritance, an estate. Mackeld. Rom. Law, § 162.

UNIVERSITAS RERUM. In the civil law. Literally, a whole of things. Several single things, which, though not mechanically connected with one another, are, when taken together, regarded as a whole in any legal respect. Mackeld. Rom. Law, § 162.

UNIVERSITAS VEL CORPORATIO NON DICITUR ALIQUID FACERE NISI ID SIT COLLEGIALITER DELIBERATUM, ETIAMSI MAJOR PARS ID FACIAT. A university or corporation is not said to do anything unless it be deliberated upon as a body, although the majority should do it. Dav. 48.

UNIVERSITY. An institution of higher learning, consisting of an assemblage of colleges united under one corporate organization and government, affording instruction in the arts and sciences and the learned professions, and conferring degrees. See Com. v. Banks, 198 Pa. 397, 48 A. 277.

Whole body of teachers and scholars, engaged at particular place in giving and receiving instruction in higher branches of learning; also such persons, associated together as society or corporate body with definite organization and acknowledged powers and privileges, especially

of conferring degrees, and forming institution for promotion of education in higher and more important branches of learning. West v. Board of Trustees of Miami University and Miami Normal School, 41 Ohio App. 367, 181 N.E. 144, 149.

UNIVERSITY COURT. See Chancellor's Courts in the Two Universities.

UNIVERSUS. Lat. The whole; all together. Calvin.

UNJUST. Contrary to right and justice, or to the enjoyment of his rights by another, or to the standards of conduct furnished by the laws. U. S. v. Oglesby Grocery Co., D.C.Ga., 264 F. 691, 695; Komen v. City of St. Louis, 316 Mo. 9, 289 S.W. 838, 841.

UNJUST ENRICHMENT, DOCTRINE OF. Doctrine that person shall not be allowed to profit or enrich himself inequitably at another's expense. American University v. Forbes, 88 N.H. 17, 183 A. 860, 862. Under this doctrine a defendant has something of value at the plaintiff's expense under circumstances which impose a legal duty of restitution. Herrmann v. Gleason, C.C.A.Mich., 126 F.2d 936, 940. Doctrine permits recovery in certain instances where person has received from another a benefit retention of which would be unjust. Seekins v. King, 66 R.I. 105, 17 A.2d 869, 871, 134 A.L.R. 1060. Doctrine is not contractual but is equitable in nature. State v. Martin, 59 Ariz. 438, 130 P.2d 48, 52.

"Unjust enrichment" of a person occurs when he has and retains money or benefits which in justice and equity belong to another. Hummel v. Hummel, 133 Ohio St. 520, 14 N.E.2d 923, 927. Thus one who has conferred a benefit upon another solely because of a basic mistake of fact induced by a nondisclosure is entitled to restitution on above doctrine. Conkling's Estate v. Champlin, 193 Okl. 79, 141 P.2d 569, 570.

UNKOUTH. Unknown. The law French form of the Saxon "uncouth." Britt. c. 12.

UNLAGE. Sax. An unjust law.

UNLARICH. In old Scotch law. That which is done without law or against law. Spelman.

UNLAW. In Scotch law. A witness was formerly inadmissible who was not worth the king's *unlaw; i. e.*, the sum of £10 Scots, then the common fine for absence from court and for small delinquencies. Bell.

UNLAWFUL. That which is contrary to law or unauthorized by law. State v. Chenault, 20 N.M. 181, 147 P. 283, 285. That which is not lawful. State v. Bulot, 175 La. 21, 142 So. 787, 788. The acting contrary to, or in defiance of the law; disobeying or disregarding the law. While necessarily not implying the element of criminality, it is broad enough to include it. Sturgeon v. Crosby Mortuary, 140 Neb. 82, 299 N.W. 378, 383.

"Unlawful" and "illegal" are frequently used as synonymous terms, but, in the proper sense of the word, "unlawful," as applied to promises, agreements, considerations, and the like, denotes that they are ineffectual in law because they involve acts which, although not illegal, *i. e.*, positively forbidden, are disapproved of by the law, and are therefore not recognized as the ground of legal rights, either because they are immoral or because they are against public policy. It is on this ground that contracts in restraint of marriage or of trade are generally void. Sweet. And see Hagerman v. Buchanan, 45 N.J.Eq. 292, 17 A. 946, 14 Am.St.Rep. 732; Tatum v. State, 66 Ala. 467. People v. Chicago Gas Trust Co., 130 Ill. 268, 22 N.E. 798, 8 L.R.A. 497, 17 Am.St.Rep. 319.

UNLAWFUL ACT. Act contrary to law, and presupposes that there must be an existing law. State v. Campbell, 217 Iowa 848, 251 N.W. 717, 92 A.L.R. 1176.

In criminal jurisprudence, a violation of some prohibitory law and includes all willful, actionable violations of civil rights, and is not confined to criminal acts. State v. Hailey, 350 Mo. 300, 165 S.W.2d 422, 427.

The "unlawful acts" within manslaughter statutes consist of reckless conduct or conduct evincing marked disregard for safety of others. State v. Newton, 105 Utah 561, 144 P.2d 290, 293; State v. Thatcher, 108 Utah 63, 157 P.2d 258, 261.

UNLAWFUL ASSEMBLY. At common law. The meeting together of three or more persons, to the disturbance of the public peace, and with the intention of co-operating in the forcible and violent execution of some unlawful private enterprise. If they take steps towards the performance of their purpose, it becomes a *rout;* and, if they put their design into actual execution, it is a *riot.* 4 Bl. Comm. 146. To constitute offense it must appear that there was common intent of persons assembled to attain purpose, whether lawful or unlawful, by commission of acts of intimidation and disorder likely to produce danger to peace of neighborhood, and actually tending to inspire courageous persons with well-grounded fear of serious breaches of public peace. State v. Butterworth, 104 N.J.L. 579, 142 A. 57, 60, 58 A.L.R. 744.

Three or more persons who assemble peaceably without violent or tumultuous manner to do lawful act, but who thereafter make attempt or motion to do any act whether lawful or unlawful, in either tumultuous, violent, or unful manner to the terror or disturbance of others, become an "unlawful assembly." Koss v. State, 217 Wis. 325, 258 N.W. 860, 862.

UNLAWFUL BELLIGERENTS. Enemies passing the boundaries of the United States for purpose of destroying war industries and supplies without a uniform or other emblem signifying their belligerent status or discarding that means of identification after entry. Ex parte Quirin, App.D.C., 63 S.Ct. 2, 15, 317 U.S. 1, 87 L.Ed. 3.

UNLAWFUL DETAINER. The unjustifiable retention of the possession of lands by one whose original entry was lawful and of right, but whose right to the possession has terminated and who refuses to quit, as in the case of a tenant holding over after the termination of the lease and in spite of a demand for possession by the landlord. McDevitt v. Lambert, 80 Ala. 536, 2 So. 438; Silva v. Campbell, 84 Cal. 420, 24 Pac. 316; Brandley v. Lewis, 97 Utah 217, 92 P.2d 338, 339.

Actions of "unlawful detainer" concern only right of possession of realty, and differ from ejectment in that no ultimate question of title or estate can be determined. McCracken v. Wright, 159 Kan. 615, 157 P.2d 814, 817.

Where an entry upon lands is unlawful, whether forcible or not, and the subsequent conduct is forcible and tortious, the offense committed is a "forcible entry and de-

tainer;" but where the original entry is lawful, and the subsequent holding forcible and tortious, the offense is an "unlawful detainer" only. Pullen v. Boney, 4 N.J.L. 129.

UNLAWFUL ENTRY. An entry upon lands effected peaceably and without force, but which is without color of title and is accomplished by means of fraud or some other willful wrong. Blaco v. Haller, 9 Neb. 149, 1 N.W. 978.

UNLAWFUL PICKETING. Picketing which is not honest or truthful. Park & Tilford Import Corporation v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 848, A. F. of L., Cal. App., 139 P.2d 963, 971; Magill Bros. v. Building Service Employees' International Union, 20 Cal.2d 506; 127 P.2d 542, 543. Picketing which involves false statements or misrepresentations of facts. Wiest v. Dirks, 215 Ind. 568, 20 N.E.2d 969, 971. Picketing when it ceases to serve the purpose it seeks to accomplish. E. M. Loew's Enterprises v. International Alliance of Theatrical Stage Employees, 125 Conn. 391, 6 A.2d 321, 323, 122 A.L.R. 1287. When force or violence is used to persuade or prevent workmen from continuing their employment. Ex parte Bell, 37 Cal.App.2d 582, 100 P.2d 339, 343.

UNLAWFUL TOUCHING OF PERSON'S BODY. Constituting physical injury to person may be indirect, as by precipitation on body of person of any material substance. Christy Bros. Circus v. Turnage, 38 Ga.App. 581, 144 S.E. 680, 681.

UNLAWFUL TRANSPORTATION OF INTOXICATING LIQUORS. To constitute this offense there must be a substantial movement or transporting of the liquor from one place or vicinity to another. Nelson v. State, 116 Neb. 219, 216 N.W. 556, 557.

UNLAWFULLY. Illegally; wrongfully. Dickinson v. New York, 92 N.Y. 584; Dameron v. Hamilton, 264 Mo. 103, 174 S.W. 425, 430; See State v. Massey, 97 N.C. 465, 2 S.E. 445.

This word is frequently used in indictments in the description of the offence; it is necessary when the crime did not exist at common law, and when a statute, in describing an offence which it creates, uses the word; 1 Mood.C.C. 339; but is unnecessary whenever the crime existed at common law and is manifestly illegal; 1 Chit. Cr.L. *241.

UNLESS. If it be not that, if it be not the case that, if not, supposing not, if it be not, except. West Lumber Co. v. Keen, Tex.Com.App., 237 S. W. 236; Ward v. Interstate Business Men's Acc. Ass'n, 185 Iowa, 674, 169 N.W. 451, 452. A reservation or option to change one's mind provided a certain event happens, a conditional promise. Federal Sign System v. Amavet, 7 La.App. 680, 682.

UNLESS LEASE. An oil and gas lease which provides that lease will be rendered null and void and lessee will automatically be relieved from liability, upon failure to commence operations or to pay rent. It must be expressly stipulated in the lease that lease shall become null and void at a certain time "unless" the lessee begins operations or pays the rental stipulated. Brunson v. Carter Oil Co., D.C.Okl., 259 F. 656, 663.

Where the word "unless" precedes the description of the act to be performed under an oil lease, no obligation to perform that act is imposed by the lease. McCrabb v. Moulton, C.C.A.Mo., 124 F.2d 689, 691.

UNLIMITED. Without confines, unrestricted, boundless. Flynn v. Caplan, 234 Mass. 516, 126 N.E. 776, 777.

UNLIQUIDATED. Not ascertained in amount; not determined; remaining unassessed or unsettled; as unliquidated damages; Davies v. Turner, 61 Ga.App. 531, 6 S.E.2d 356, 358.

A debt is spoken of as "unliquidated," if the amount thereof cannot be ascertained at the trial by a mere computation, based on the terms of the obligation or on some other accepted standard. Hettrick Mfg. Co. v. Barish, 120 Misc. 673, 199 N.Y.S. 755, 767.

Under the law of accord and satisfaction, a claim or debt will be regarded as unliquidated if it is in dispute as to the proper amount. Paulsen Estate v. Naches-Selah Irr. Dist., 190 Wash. 205, 67 P.2d 856, 858.

A claim in bankruptcy is "unliquidated" until final fixation of amount of liability. United States v. Sullivan, D.C. N.Y., 19 F.Supp. 695, 698. See, also, Damages.

UNLIQUIDATED DEMAND. Where it is admitted that one of two specific sums is due, but there is a dispute as to which is proper amount. Perryman Burns Coal Co. v. Seaboard Coal Co. of Connecticut, 128 Conn. 70, 20 A.2d 404, 405.

UNLIVERY. A term used in maritime law to designate the unloading of cargo of a vessel at the place where it is properly to be delivered. The Two Catharines, 24 F.Cas. 429.

UNLOADING. Act of discharging a cargo, taking a load from, disburdening or removing from. American Oil & Supply Co. v. United States Casualty Co., 19 N.J.Misc. 7, 18 A.2d 257, 259.

An unloading clause in an automobile liability policy covers the entire process involved in the movement of articles by and from a motor vehicle to the place where they are turned over to the one to whom the insured is to make delivery, if the clause is construed in accordance with what may be called the "complete operation" rule. Pacific Auto. Ins. Co. v. Commercial Cas. Ins. Co. of N. Y., 161 P.2d 423, 108 Utah 500, 160 A.L.R. 1251. There are, however, two other rules or doctrines used by various courts in applying the unloading clause of such a policy. One is known as the "coming to rest" rule, and the other is the "continuous passage" rule. Blashfield, Cyc. of Automobile Law and Prac., Perm. Ed., § 3972.5. But the complete operation rule is said to be the modern doctrine, supported by the trend of the later cases. London Guarantee & Acc. Co. v. C. B. White & Bros., 49 S.E.2d 254, 188 Va. 195.

UNLOOKED FOR MISHAP OR UNTOWARD EVENT. One occurring unexpectedly and not naturally or in ordinary course of events. Fogg v. Van Saun Coal Co., 12 N.J.Misc. 680, 174 A. 419, 421.

UNMARKETABLE TITLE. When for vendee to accept title proffered would lay him open to fair probability of vexatious litigation with possibility of serious loss. Schoenberg v. O'Connor, 14 N.J. Misc. 412, 185 A. 377, 381. It being sufficient to render it so if ordinarily prudent man with knowledge of the facts and aware of legal questions involved would not accept it in the ordinary course

of business but title need not be bad in fact; Barrett v. McMannis, 153 Kan. 420, 110 P.2d 774, 777, 778; Ayers v. Graff, 153 Kan. 209, 109 P.2d 202, 203; Ghormley v. Kleeden, 155 Kan. 319, 124 P.2d 467, 470.

Where some defect of substantial character exists and facts are known which fairly raise reasonable doubt as to title. Schul v. Clapp, 154 Kan. 372, 118 P.2d 570, 574. And mere quibbles and pecadilloes which the ingenuity of counsel can raise against a title do not render it an "unmarketable title". Barrett v. McMannis, 153 Kan. 420, 110 P.2d 774, 778.

UNMARRIED. Its primary meaning is never having been married; but it is a word of flexible meaning and it may be construed as not having a husband or wife at the time in question. 9 H.L. Cas. 601; People v. Weinstock, Mag.Ct., 140 N.Y.S. 453, 458.

A divorced woman has been held an unmarried woman. In re Giles, 85 C.C.A. 418, 158 F. 596; State v. Wallace, 79 Or. 129, 154 P. 430, L.R.A.1916D, 457. Douglas v. Board of Foreign Missions of Presbyterian Church in U. S. of America, 110 N.J.Eq. 331, 160 A. 37, 39.

UNNATURAL OFFENSE. The infamous crime against nature; *i. e.,* sodomy or buggery.

UNNATURAL WILL. An expression applied to disposition of estate or large portion thereof to strangers, to exclusion of natural objects of testator's bounty without apparent reason. In re Shay's Estate, 196 Cal. 355, 237 P. 1079, 1083.

UNNECESSARY. Not required by the circumstances of the case. Hickman v. Ohio State Life Ins. Co., 92 Ohio St. 87, 110 N.E. 542, 543.

UNNECESSARY HARDSHIP. Within zoning ordinance so as to authorize granting of variance on such ground if land cannot yield a reasonable return if used only for a purpose allowed in zone, the plight of owner is due to unique circumstances not to general conditions in the neighborhood and use to be authorized will not alter essential character of the locality. Calcagno v. Town Board of Town of Webster, 265 App.Div. 687, 41 N.Y.S.2d 140, 142.

It has also been said that test whether terms of zoning ordinance impose an "unnecessary hardship" depends on whether use restriction is so unreasonable as to constitute an arbitrary interference with basic right of private property. Scaduto v. Town of Bloomfield, 127 N.J.L. 1, 20 A.2d 649, 650.

UNO ABSURDO DATO, INFINITA SEQUUNTUR. 1 Coke, 102. One absurdity being allowed, an infinity follows.

UNO ACTU. Lat. In a single act; by one and the same act.

UNO FLATU. Lat. In one breath. 3 Man. & G. 45. *Uno flatu, et uno intuitu,* at one breath, and in one view. Pope v. Nickerson, 3 Story, 504, F. Cas.No. 11,274.

UNOCCUPIED. Within fire policy exempting insurer from liability in case dwelling is "unoccupied," means when it is not used as a residence, when it is no longer used for the accustomed and ordinary purposes of a dwelling or place of abode, or when it is not the place of usual return and habitual stoppage. Vinton v. Atlas Assur. Co., 107 Vt. 272, 178 A. 909, 911. Hence a mere temporary absence of occupants of dwelling house from such premises, with intention to return thereto does not render dwelling "unoccupied". Foley v. Sonoma County Farmers' Mut. Fire Ins. Co., 18 Cal.2d 232, 115 P.2d 1, 2, 3.

See Occupation.

UNPRECEDENTED. Having no precedent or example, novel, new, unexampled. State v. Malone, Tex.Civ.App., 168 S.W.2d 292, 300. Unusual and extraordinary; affording no reasonable warning or expectation of recurrence. Nashville, C. & St. L. Ry. v. Yarbrough, 194 Ala. 162, 69 So. 582, 584.

UNPRECEDENTED RAINFALL. An unusual and extraordinary rainfall as has no example or parallel in the history of rainfall in the vicinity affected, or as affords no reasonable warning or expectation that it will likely occur again. City of Birmingham v. Jackson, 229 Ala. 133, 155 So. 527. Trout Brook Co. v. Willow River Power Co., 221 Wis. 616, 267 N.W. 302, 305.

UNPROFESSIONAL CONDUCT. That which is by general opinion considered to be grossly unprofessional because immoral or dishonorable. State Board of Dental Examiners v. Savelle, 90 Colo. 177, 8 P.2d 693, 697. That which violates ethical code of profession or such conduct which is unbecoming member of profession in good standing. People v. Gorman, 346 Ill. 432, 178 N.E. 880, 885. It involves breach of duty which professional ethics enjoin. People v. Johnson, 344 Ill. 132, 176 N.E. 278, 282.

UNQUES. L. Fr. Ever; always. *Ne unques,* never.

UNQUES PRIST. L. Fr. Always ready. Cowell. Another form of *tout temps prist.*

UNREASONABLE. Irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid. Southern Kansas State Lines Co. v. Public Service Commission, 135 Kan. 657, 11 P.2d 985, 987. Not reasonable; immoderate; exorbitant. Cass v. State, 124 Tex.Cr.R. 208, 61 S.W.2d 500. Capricious; arbitrary; confiscatory. Harris v. State Corporation Commission, 46 N.M. 352, 129 P.2d 323, 328.

UNREASONABLE REFUSAL TO SUBMIT TO OPERATION. An injured employee's refusal to submit to an operation is unreasonable, so as to deprive him of right to workmen's compensation if it appears that an operation of a simple character not involving serious suffering or danger will result in substantial physical improvement. Black Star Coal Co. v. Surgener, 297 Ky. 653, 181 S.W.2d 53, 54.

UNREASONABLE RESTRAINT OF TRADE. Within Sherman Anti-Trust Act agreements for price maintenance of articles moving in interstate commerce. Sherman Anti-Trust Act, § 1, 15 U.S.C.A. § 1. American Tobacco Co. v. U. S., C. C.A.Ky., 147 F.2d 93, 108. Any combination or

conspiracy that operates directly on prices or price structure and has for its purpose the fixing of prices. United States v. Waltham Watch Co., D.C.N.Y., 47 F.Supp. 524, 531.

UNREASONABLE RESTRAINT ON ALIENATION. Brought about by gift of absolute ownership in property followed by such condition as takes away incidents of such ownership. Bliven v. Borden, 56 R.I. 283, 185 A. 239, 244.

UNREASONABLE SEARCH. See Search.

UNRULY AND DANGEROUS ANIMALS. Within the meaning of the law, such as are likely to injure other domestic animals and persons. Fink v. United States Coal & Coke Co., 72 W.Va. 507, 78 S.E. 702, 703.

UNSAFE. Dangerous. Hanson v. City of Anamosa, 158 N.W. 591, 595, 177 Iowa 101; Houston & T. C. R. Co. v. Smallwood, Tex.Civ.App., 171 S.W. 292, 293.

UNSEATED LAND. A phrase used in the Pennsylvania tax laws to describe land which, though owned by a private person, has not been reclaimed, cultivated, improved, occupied, or made a place of residence. See Seated Land, *supra.* And see Stoetzel v. Jackson, 105 Pa. 567; McLeod v. Lloyd, 43 Or. 260, 71 P. 799. A tract of land ceases to be unseated as soon as it is actually occupied with a view to permanent residence. Wallace v. Scott, 7 Watts & S. (Pa.) 248.

UNSEAWORTHY. Of a vessel, unable to withstand the perils of an ordinary voyage at sea. Fireman's Fund Ins. Co. v. Compania de Navegacion, Interior, S. A., C.C.A.La., 19 F.2d 493, 495; Or if she could not reasonably have been expected to make the voyage. Interlake Iron Corporation v. Gartland S. S. Co., C.C.A.Mich., 121 F.2d 267, 269, 270. Or if not manned by a competent crew. Peninsular & Occidental S. S. Co. v. National Labor Relations Board, C.C.A.5, 98 F. 2d 411, 414. But a ship is not "unseaworthy" where defect in ship is such that defect can be remedied on the spot in a short time by materials available. Middleton & Co. (Canada) Limited v. Ocean Dominion Steamship Corporation, C.C.A. N.Y., 137 F.2d 619, 622.

UNSOLEMN WAR. War denounced without a declaration; war made not upon general but special declaration; imperfect war. People v. McLeod, 1 Hill, N.Y., 409, 37 Am.Dec. 328.

UNSOLEMN WILL. In the Civil law. One in which an executor is not appointed. Swimb. Wills 29.

UNSOUND MIND. A person of unsound mind is one who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane persons, idiots, and imbeciles. Sweet. See Insanity. And see Cheney v. Price, 90 Hun 238, 37 N.Y.S. 117; In re Black's Estate, 1 Myr.Prob. (Cal.) 24. Stewart v. Lispenard, 26 Wend. (N.Y.) 300; Ray v. State, 32 Ga.App. 513, 124 S.E. 57. It exists where there is an essential privation of the reasoning faculties, or where a person is incapable of understanding and acting with discretion in the ordinary affairs of life. Oklahoma Natural Gas Corporation v. Lay, 175 Okl. 75, 51 P.2d 580, 582.

But eccentricity, uncleanliness, slovenliness, neglect of person and clothing, and offensive and disgusting personal habits do not constitute unsoundness of mind. Pendarvis v. Gibb, 328 Ill. 282, 159 N.E. 353, 357.

UNTHRIFT. A prodigal; a spendthrift. 1 Bl. Comm. 306.

UNTIL. Up to time of. A word of limitation, used ordinarily to restrict that which precedes to what immediately follows it, and its office is to fix some point of time or some event upon the arrival or occurrence of which what precedes will cease to exist. State v. Kehoe, 144 P. 162, 164, 49 Mont. 582; Irwin v. Irwin, 167 N.Y.S. 76, 78, 179 App.Div. 871; Empire Oil and Refining Co. v. Babson, 182 Okl. 336, 77 P.2d 682, 684.

UNTOWARD EVENT. See Unlooked for Mishap.

UNTRUE. *Prima facie* inaccurate, but not necessarily wilfully false. 3 B. & S. 929.

A statement is "untrue" which does not express things exactly as they are. Zolintakis v. Equitable Life Assur. Soc. of United States, C.C.A.Utah, 108 F.2d 902, 905.

UNUMQUODQUE DISSOLVITUR EODEM LIGAMINE QUO LIGATUR. Every obligation is dissolved by the same solemnity with which it is created. Broom, Max. 884.

UNUMQUODQUE EODEM MODO QUO COLLIGATU EST, DISSOLVITUR,—QUO CONSTITUITUR, DESTRUITUR. Everything is dissolved by the same means by which it is put together,—destroyed by the same means by which it is established. 2 Rolle, 39; Broom, Max. 891.

UNUMQUODQUE EST ID QUOD EST PRINCIPALIUS IN IPSO. Hob. 123. That which is the principal part of a thing is the thing itself.

UNUMQUODQUE PRINCIPIORUM EST SIBIMETIPSI FIDES; ET PERSPICUA VERA NON SUNT PROBANDA. Every general principle [or maxim of law] is its own pledge or warrant; and things that are clearly true are not to be proved. Branch; Co. Litt. 11.

UNUS NULLUS RULE, THE. The rule of evidence which obtains in the civil law, that the testimony of *one* witness is equivalent to the testimony of *none.* Wharton.

UNUSUAL. Uncommon; not usual, rare. Thompson v. Anderson, 107 Utah 331, 153 P.2d 665, 666.

UNUSUAL CIRCUMSTANCE. Requiring apportionment between life tenants and remaindermen of dividends declared upon stock held in corpus of trust is not one set up by fiduciary or court, but comes from some administrative or corporate act within corporation or some break down within corporate structure. In re Knox' Estate, 328 Pa. 177, 195 A. 28, 30, 113 A.L.R. 1185.

UNVALUED POLICY. One where the value of property insured is not settled in policy, and in case of loss must be agreed on or proved. Hartford Live Stock Ins. Co. v. Gibson, 256 Ky. 338, 76 S.W.2d 17, 18.

UNWHOLESOME FOOD. Food not fit to be eaten; food which if eaten would be injurious.

UNWORTHY. Unbecoming, discreditable, not having suitable qualities or value. Alsup v. State, 91 Tex.Cr.R. 224, 238 S.W. 667, 669.

UNWRITTEN LAW. All that portion of the law, observed and administered in the courts, which has not been enacted or promulgated in the form of a statute or ordinance, including the unenacted portions of the common law, general and particular customs having the force of law, and the rules, principles, and maxims established by judicial precedents or the successive like decisions of the courts. See Code Civ. Proc. Cal. § 1899; B. & C. Comp. Or. 1901, § 736 (Code 1930, § 9-609).

A popular expression to designate a supposed rule of law that a man who takes the life of his wife's paramour or daughter's seducer is not guilty of a criminal offence. Almerigi v. State, 17 Okl.Cr. 458, 188 P. 1094, 1096. A trial judge is said to have expressed to a jury his approval of a verdict based upon such a theory; see 43 Canada L. J. 764; see 19 Green Bag 721, an article from the London L. J.; see also 12 Law Notes 224.

The rule was much urged upon a jury in the common pleas of Philadelphia: Biddle, J., said to counsel: "In this court the 'unwritten law' is not worth the paper it *isn't* written on." It was held that such defense is not available to one accused of homicide in Wehenkel v. State, 116 Neb. 493, 218 N.W. 137, 138, and in People v. Young, 70 Cal. App.2d 28, 160 P.2d 132, 136.

UPKEEP. The act of keeping up or maintaining; maintenance, repair. Central Hanover Bank & Trust Co. v. Nisbet, 121 Conn. 682, 186 A. 643, 645.

UPLANDS. Lands bordering on bodies of waters. Martin v. Busch, 93 Fla. 535, 112 So. 274, 285.

UPLIFTED HAND. The hand raised towards the heavens, in one of the forms of taking an oath, instead of being laid upon the Gospels.

UPPER BENCH. The court of king's bench, in England, was so called during the interval between 1649 and 1660, the period of the commonwealth, Rolle being then chief justice. See 3 Bl. Comm. 202.

UPSET PRICE. The price at which any subject, as lands or goods, is exposed to sale by auction, below which it is not to be sold. In a final decree in foreclosure, the decree should name an upset price large enough to cover costs and all allowances made by the court, receiver's certificates and interest, liens prior to the bonds, amounts diverted from the earnings, and all undetermined claims which will be settled before the confirmation and sale. Blair v. St. Louis, H. & K. R. Co., C.C.Mo., 25 F. 232; Brinckley v. Sager, 232 Wis. 88, 286 N.W. 570, 573.

UPSUN. In Scotch law. Between the hours of sunrise and sunset. Poinding must be executed with *upsun.* 1 Forb. Inst. pt. 3, p. 32.

URBAN. Of or belonging to a city or town. Derived from the Latin "urbanis," which in that language imports the same meaning. City of South Pasadena v. City of San Gabriel, 134 Cal.App. 403, 25 P.2d 516.

URBAN HOMESTEAD. See Homestead.

URBAN SERVITUDE. City servitudes, or servitudes of houses, are called "urban." They are the easements appertaining to the building and construction of houses; as, for instance, the right to light and air, or the right to build a house so as to throw the rain-water on a neighbor's house. Mozley & Whitley; Civ. Code La. § 711.

URBS. Lat. In Roman law. A city, or a walled town. Sometimes it is put for *civitas,* and denotes the inhabitants, or both the city and its inhabitants; *i. e.,* the municipality or commonwealth. By way of special pre-eminence, *urbs* meant the city of Rome. Ainsworth.

URE. L. Fr. Effect; practice. *Mis en ure,* put in practice; carried into effect. Kelham.

USAGE. A reasonable and lawful public custom in a locality concerning particular transactions which is either known to the parties, or so well established, general, and uniform that they must be presumed to have acted with reference thereto. Milroy v. Railway Co., 98 Iowa 188, 67 N.W. 276; Barnard v. Kellogg, 10 Wall. 388, 19 L.Ed. 987; Barreda v. Milmo Nat. Bank, Tex.Civ.App., 241 S.W. 743, 745. Gerseta Corporation v. Silk Ass'n of America, 220 App.Div. 293, 222 N.Y.S. 11, 13. Practice in fact. Electrical Research Products v. Gross, C.C.A.Alaska, 120 F.2d 301, 305. Uniform practice or course of conduct followed in certain lines of business or professions or some procedure or phase thereof. Turner v. Donovan, 3 Cal.App.2d 485, 39 P.2d 858, 859.

"Usage" cannot be proved by isolated instances, but must be certain, uniform and notorious. Unkovich v. New York Cent. R. Co., 128 N.J.Eq. 377, 16 A.2d 558, 561. It is distinguished from "custom" in that "usage" derives its efficacy from assent of parties to transaction, and hence is important only in consensual agreements, while "custom" derives its efficacy from its adoption into the law, is binding irrespective of any manifestation of assent by parties concerned, and may be of importance in any department of law. Gulf Refining Co. v. Universal Ins. Co., C.C.A.N.Y., 32 F.2d 555, 557.

"Usage," in French law, is the *"usus"* of Roman law, and corresponds very nearly to the tenancy at will or on sufferance of English law. Brown.

"Usage," in its most extensive meaning, includes both custom and prescription; but, in its narrower signification, the term refers to a general habit, mode, or course of procedure. A usage differs from a custom, in that it does not require that the usage should be immemorial to establish it; but the usage must be known, certain, uniform, reasonable, and not contrary to law. Lowry **v.** Read, 3 Brewst. (Pa.) 452.

Fair Usage

See Fair Usage.

General Usage

One which prevails generally throughout the country, or is followed generally by a given profession or trade, and is not local in its nature or observance.

Usage of Trade

A course of dealing; a mode of conducting transactions of a particular kind. Haskins v. Warren, 115 Mass. 535. A mode of dealing generally observed in a particular trade. United States v. Stanolind Crude Oil Purchasing Co., C. C.A.Okl., 113 F.2d 194, 200; Codd v. Westchester Fire Ins. Co., 14 Wash.2d 600, 128 P.2d 968, 973.

USANCE. In mercantile law. The common period fixed by the usage or custom or habit of dealing between the country where a bill is drawn, and that where it is payable, for the payment of bills of exchange. It means, in some countries, a month, in others two or more months, and in others half a month. Story, Bills, §§ 50, 144, 332.

USE, *v.* To make use of, to convert to one's service, to avail one's self of, to employ. Hopkins v. Howard's Ex'x, 266 Ky. 685, 99 S.W.2d 810, 812. To leave no capacity of force or use in. Bridgeport Mach. Co. v. McKnab, 136 Kan. 781, 18 P.2d 186, 187.

USE, *n.* Act of employing everything, or state of being employed; application; employment, as the use of a pen, or his machines are in use. Also the fact of being used or employed habitually; usage, as, the wear and tear resulting from ordinary use. Berry-Kofron Dental Laboratory Co. v. Smith, 345 Mo. 922, 137 S.W.2d 452, 454, 455, 456. The purpose served, a purpose, object or end for useful or advantageous nature. Brown v. Kennedy, Ohio App., 49 N.E.2d 417, 418.

A confidence reposed in another, who was made tenant of the land, or terre-tenant, that he would dispose of the land according to the intention of the *cestui que use,* or him to whose use it was granted, and suffer him to take the profits. 2 Bl. Comm. 328.

A right in one person, called the *"cestui que use,"* to take the profits of land of which another has the legal title and possession, together with the duty of defending the same, and of making estates thereof according to the direction of the *cestui que use.* Bouvier.

Uses and *trusts* are not so much different things as different aspects of the same subject. A use regards principally the beneficial interest; a trust regards principally the nominal ownership. The usage of the two terms is, however, widely different. The word "use" is employed to denote either an estate vested since the statute of uses, and by force of that statute, or to denote such an estate created before the statute as, had it been created since, would have become a legal estate by force of the statute. The word "trust" is employed since that statute to denote the relation between the party invested with the legal estate (whether by force of that statute or independently of it) and the party beneficially entitled, who has hitherto been said to have the equitable estate. Mozley & Whiteley.

Civil Law

A right of receiving so much of the natural profits of a thing as is necessary to daily sustenance. It differs from "usufruct," which is a right not only to use, but to enjoy. 1 Browne, Civil & Adm. Law, 184.

Right given to any one to make a gratuitous use of a thing belonging to another, or to exact such a portion of the fruit it produces as is necessary for his personal wants and those of his family. Civ.Code La. art. 626.

Conveyancing

"Use" literally means "benefit;" thus, in an ordinary assignment of chattels, the assignor transfers the property to the assignee for his "absolute use and benefit." In the expressions "separate use," "superstitious use," and "charitable use," "use" has the same meaning Sweet.

Non-technical Sense

The "use" of a thing means that one is to enjoy, hold, occupy, or have some manner of benefit thereof. Bryson v. Hicks, 78 Ind.App. 111, 134 N.E. 874, 875. Use also means usefulness, utility, advantage, productive of benefit. Williams v. City of Norman, 85 Okl. 230, 205 P. 144, 148; National Surety Co. v. Jarrett, 95 W.Va. 420, 121 S.E. 291, 295, 36 A.L.R. 1171.

General

Cestui que use. A person for whose use and benefit lands or tenements are held by another. The latter, before the statute of uses, was called the "feoffee to use," and held the nominal or legal title.

Charitable use. See Charitable.

Contingent use. A use limited to take effect upon the happening of some future contingent event; as where lands are conveyed to the use of A. and B., after a marriage shall be had between them. 2 Bl.Comm. 334; Haywood v. Shreve, 44 N.J.L. 94; Jemison v. Blowers, 5 Barb. (N.Y.) 692.

Exclusive use. See Exclusive Use.

Executed use. The first use in a conveyance upon which the statute of uses operates by bringing the possession to it, the combination of which, *i. e.,* the use and the possession, form the legal estate, and thus the statute is said to execute the use. Wharton.

Executory uses. These are springing uses, which confer a legal title answering to an executory devise; as when a limitation to the use of A. in fee is defeasible by a limitation to the use of B., to arise at a future period, or on a given event.

Existing use. See Existing Use.

Feoffee to uses. A person to whom (before the statute of uses) land was conveyed "for the use" of a third person. He held the nominal or legal title, while the third person, called the *"cestui que use,"* was entitled to the beneficial enjoyment of the estate.

Official use. An active use before the statute of uses, which imposed some duty on the legal owner or feoffee to uses; as a conveyance to A. with directions for him to sell the estate and distribute the proceeds among B., C., and D. To enable A. to perform this duty, he had the legal possession of the estate to be sold. Wharton.

Passive use. A permissive use (*q. v.*).

Permissive use. A passive use which was resorted to before the statute of uses, in order to avoid a harsh law; as that of mortmain or a feudal forfeiture. It was a mere invention in order to evade the law by secrecy; as a conveyance to A. to the use of B. A. simply held the possession, and B. enjoyed the profits of the estate. Wharton.

Resulting use. A use raised by equity for the benefit of a feoffor who has made a voluntary conveyance to uses without any declaration of the use. 2 Washb.Real Prop. 100. A resulting use arises where the legal seisin is transferred, and no use is expressly declared, nor any consideration or evidence of intent to direct the use. The use then remains in the original grantor, for it cannot be supposed that the estate was intended to be given away, and the statute immediately transfers the legal estate to such resulting use. Wharton.

Secondary use. A use limited to take effect in derogation of a preceding estate, otherwise called a "shifting use," as a conveyance to the use of A. and his heirs, with a proviso that, when B. returns from India, then to the use of C. and his heirs. 1 Steph.Comm. 546.

Shifting use. A use which is so limited that it will be made to shift or transfer itself, from one beneficiary to another, upon the occurrence of a certain event after its creation. For example, an estate is limited to the use of A. and his heirs, provided that, upon the return of B. from Rome, it shall be to the use of C. and his heirs; this is a shifting use, which transfers itself to C. when the event happens. 1 Steph.Comm. 503; 2 Bl. Comm. 335. These shifting uses are common in all settlements; and, in marriage settlements, the first use is always to the owner in fee till the marriage, and then to other uses. The fee remains with the owner until the marriage, and then it *shifts* as uses arise. 4 Kent, Comm. 297.

Springing use. A use limited to arise on a future event where no preceding use is limited, and which does not take effect in derogation of any other interest than that which results to the grantor, or remains in him in the meantime. 2 Washb.Real.Prop. 281; Smith v. Brisson, 90 N.C. 288.

Statute of uses. An English statute enacted in 1536, (27 Hen. VIII, c. 10,) directed against the practice of creating uses in lands, and which converted the purely equitable title of persons entitled to a use into a legal title or absolute ownership with right of possession. The statute is said to "execute the use," that is, it abolishes the intervening estate of the feoffee to uses, and makes the beneficial interest of the *cestui que use* an absolute legal title. See Ohio & Colorado Smelting & Refining Co. v. Barr, 58 Colo. 116, 144 P. 552, 554.

Superstitious uses. See that title.

Use and habitation. Within a grant does not mean the exclusive use and habitation, but the necessities of the grantee are determinative of extent of privileges to be enjoyed. Barrett v. Barrett, La.App., 5 So.2d 381, 383.

Use and occupation. This is the name of an action, being a variety of *assumpsit*, to be maintained by a landlord against one who has had the occupation and enjoyment of an estate, under a contract to pay therefor, express or implied, but not under such a lease as would support an action specifically for rent. Thackray v. Ritz, 130 Misc. 403, 223 N.Y.S. 668, 669.

Use plaintiff. One for whose use (benefit) an action is brought in the name of another. Thus, where the assignee of a chose in action is not allowed to sue in his own name, the action would be entitled "A. B. (the assignor) for the Use of C. D. (the assignee) against E. F." In this case, C. D. is called the "use plaintiff."

USED FOR ILLEGAL CONVEYING OF LIQUOR. Automobile is so used, if liquor is in or on the car and is being intentionally conveyed by its movements, though it is upon the person of an occupant of the car while he is conveyed by it. Morris v. State, 220 Ala. 418, 125 So. 655.

USEE. A person for whose use a suit is brought; otherwise termed the "use plaintiff."

USEFUL. The term as used in the patent law, when applied to a machine, means that the machine will accomplish its purpose practically when applied in industry. Besser v. Merrilat Culvert Core Co., C.C.A.Iowa, 243 F. 611.

By "useful" is meant such an invention as may be applied to some beneficial use in society, in contradistinction to an invention which is injurious to the morals, the health, or the good order of society. Bedford v. Hunt, 1 Mason, 302, F.Cas.No.1,217.

USEFULNESS. Capabilities for use. The word pertains to the future as well as to the past. Chesapeake, O. & S. W. R. Co. v. Dyer Co., 87 Tenn. 712, 11 S.W. 943.

USER. The actual exercise or enjoyment of any right or property. It is particularly used of franchises.

Adverse User

Such a use of the property under claim of right as the owner himself would make, asking no permission, and disregarding all other claims to it, so far as they conflict with this use. Blanchard v. Moulton, 63 Me. 434; Murray v. Scribner, 74 Wis. 602, 43 N.W. 549; Thorworth v. Scheets, 269 Ill. 573, 110 N.E. 42, 45; Cummins v. Dumas, 147 Miss. 215, 113 So. 332, 334.

USER DE ACTION. L. Fr. In old practice. The pursuing or bringing an action. Cowell.

USHER. This word is said to be derived from "*huissier*," and is the name of a subordinate officer in some English courts of law. Archb.Pr. 25.

USHER OF THE BLACK ROD. The gentleman usher of the black rod is an officer of the house of lords appointed by letters patent from the crown. His duties are, by himself or deputy, to desire the attendance of the commons in the house of peers when the royal assent is given to bills, either by the king in person or by commission, to execute orders for the commitment of persons guilty of breach of privilege, and also to assist in the introduction of peers when they take the oaths and their seats. Brown.

USING MAIL TO DEFRAUD. The elements of this offense are the formation of a scheme or artifice to defraud, and use of mails for purpose of executing or attempting to execute such scheme or artifice; the latter element being gist of the offense. 18 U.S.C.A. § 1341. Stryker v. United States, C.C.A.Colo., 95 F.2d 601, 604, 605. The crime is complete when mails are used in such scheme, and what happened subsequently is not controlling. United States v. Ames, D.C.N.Y., 39 F.Supp. 885, 886.

USING THE SERVICE OF ANOTHER FOR PAY. This phrase as used in Compensation Act defining employer means right to control the means and manner of that service, as distinguished from results of such service, the word "service" meaning the performance of labor for the benefit of another. Rutherford v. Tobin Quarries, 336 Mo. 1171, 82 S.W.2d 918, 923.

USO. In Spanish law. Usage; that which arises from certain things which men say and do and practice uninterruptedly for a great length of time, without any hindrance whatever. Las Partidas, pt. 1, tit. 2, l. 1.

USQUE. Lat. Up to; until. This is a word of exclusion, and a release of all demands *usque ad* a certain day does not cover a bond made on that day. 2 Mod. 28.

Usually applied to ownership of property. Applied to right to air it has been held that ownership extends *"usque ad coelum."* Romano v. Birmingham Ry. Light & Power Co., 182 Ala. 335, 62 So. 677, 46 L.R.A.,N.S., 642, Ann. Cas. 1915D, 776. See A Coelo Usque Ad Centrum.

USQUE AD FILUM AQUÆ, OR VIÆ. Up to the middle of the stream or road.

USUAL. Habitual; ordinary; customary; according to usage or custom; commonly established, observed, or practiced. Such as is in common use or occurs in ordinary practice or course of events. See Chicago & A. R. Co. v. Hause, 71 Ill.App. 147; Kellogg v. Curtis, 69 Me. 214, 31 Am.Rep. 273; Oilmen's Reciprocal Ass'n v. Gilleland, Tex.Com. App., 291 S.W. 197, 199; Roberts Coal Co. v. Corder Coal Co., 143 Va. 133, 129 S.E. 341, 344; Webb v. New Mexico Pub. Co., 47 N.M. 279, 141 P.2d 333, 335. Synonymous with custom, common, wonted, regular. Dancy v. Abraham Bros. Packing Co., 171 Tenn. 311, 102 S.W.2d 526, 528.

USUAL COURSE. These words in statute excepting from application of Compensation Act employment not in usual course of employer's trade or business, refer to normal operations constituting regular business of employer. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §§ 901–950; D.C.Code 1929, T. 19, §§ 11, 12, 33 U.S.C.A. § 901 note. Hoage v. Hartford Accident & Indemnity Co., 64 App.D.C. 258, 77 F.2d 381.

USUAL COVENANTS. See Covenant.

USUAL PLACE OF ABODE. Within meaning of statute relating to service of process is place where defendant is actually living at time of service. State ex rel. Merritt v. Heffernan, 142 Fla. 496, 195 So. 145, 147, 127 A.L.R. 1263; Caskey v. Peterson, 220 Wis. 690, 263 N.W. 658, 660.

USUAL TERMS. A phrase in the common-law practice, which meant pleading issuably, rejoining *gratis*, and taking short notice of trial. When a defendant obtained further time to plead, these were the terms usually imposed. Wharton.

USUARIUS. Lat. In the civil law. One who had the mere use of a thing belonging to another for the purpose of supplying his daily wants; a usuary. Dig. 7, 8, 10, pr.; Calvin.

USUCAPIO, or USUCAPTIO. A term of Roman law used to denote a mode of acquisition of property. It corresponds very nearly to the term "prescription." But the prescription of Roman law differed from that of the English law, in this: that no *mala fide* possessor (*i. e.*, person in possession knowingly of the property of another) could, by however long a period, acquire title by possession merely. The two essential requisites to *usucapio* were *justa causa* (*i. e.*, title) and *bona fides*, (*i. e.*, ignorance.) The term *"usucapio"* is sometimes, but erroneously, written *"usucaptio."* Brown. See Pavey v. Vance, 56 Ohio St. 162, 46 N.E. 898.

As to "lucrativa usucapio," see that title.

USUCAPIO CONSTITUTA EST UT ALIQUIS LITIUM FINIS ESSET. Prescription was instituted that there might be some end to litigation. Dig. 41, 10, 5; Broom, Max. 894, note.

USUFRUCT. In the civil law. The right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce, provided it be without altering the substance of the thing. Civ.Code La. art. 533. Mulford v. Le Franc, 26 Cal. 102; Modern Music Shop v. Concordia Fire Ins. Co. of Milwaukee, 131 Misc. 305, 226 N.Y.S. 630, 635.

Under Greek Law. A right attached to the person which may not be inherited. New England Trust Co. v. Wood, Mass., 93 N.E.2d 547, 549.

Imperfect Usufruct

An imperfect or quasi usufruct is that which is of things which would be useless to the usufructuary if he did not consume or expend them or

change the substance of them; as, money, grain, liquors. Civ.Code La. art. 534.

See Quasi Usufruct infra.

Legal Usufruct

See that title.

Perfect Usufruct

An usufruct in those things which the usufructuary can enjoy without changing their substance, though their substance may be diminished or deteriorate naturally by time or by the use to which they are applied, as, a house, a piece of land, furniture, and other movable effects. Civ.Code La. art. 534.

Quasi Usufruct

In the civil law. Originally the usufruct gave no right to the substance of the thing, and consequently none to its consumption; hence only an inconsumable thing could be the object of it, whether movable or immovable. But in later times the right of usufruct was, by analogy, extended to consumable things, and therewith arose the distinction between true and *quasi* usufructs. See Mackeld. Rom. Law, § 307; Civ.Code La. art. 534. See Imperfect Usufruct, *supra.*

USUFRUCTUARY. In the civil law. One who has the usufruct or right of enjoying anything in which he has no property, Cartwright v. Cartwright, 18 Tex. 628.

USUFRUIT. In French law. The same as the *usufruct* of the English and Roman law.

USURA. Lat. In the civil law. Money given for the use of money; interest. Commonly used in the plural, "*usuræ.*" Dig. 22, 1.

USURA EST COMMODUM CERTUM QUOD PROPTER USUM REI MUTUATÆ RECIPITUR. SED SECUNDARIO SPIRARE DE ALIQUA RETRIBUTIONE, AD VOLUNTATEM EJUS QUI MUTUATUS EST, HOC NON EST VITIOSUM. Usury is a certain benefit which is received for the use of a thing lent. But to have an understanding [literally, to breathe or whisper,] in an incidental way, about some compensation to be made at the pleasure of the borrower, is not lawful. Branch, Princ.; 5 Coke, 70*b*; Glan. lib. 7, c. 16.

USURA MANIFESTA. Manifest or open usury; as distinguished from *usura velata*, veiled or concealed usury, which consists in giving a bond for the loan, in the amount of which is included the stipulated interest.

USURA MARITIMA. Interest taken on bottomry or respondentia bonds, which is proportioned to the risk, and is not affected by the usury laws.

USURARIUS. In old English law. A usurer. Fleta, lib. 2, c. 52, § 14.

USURIOUS. Pertaining to usury; partaking of the nature of usury; involving usury; tainted with usury; as, a usurious contract.

USURIOUS CONTRACT. A contract if interest contracted to be paid exceeds the rate established by statute. Commerce Farm Credit Co. v. Ramp, Tex.Civ.App., 116 S.W.2d 1144, 1149. It being sufficient when there is contingency whereby lender may get more than lawful rate of interest. Reynolds Mortg. Co. v. Thomas, Tex.Civ.App., 61 S.W.2d 1011, 1013. See, also, Usury.

USURP. To seize and hold any office by force, and without right; applied to seizure of office, place, functions, powers, rights, etc. State ex rel. Scanes v. Babb, 124 W.Va. 428, 20 S.E.2d 683, 686.

USURPATIO. Lat. In the civil law. The interruption of a usucaption, by some act on the part of the real owner. Calvin.

USURPATION. The unlawful assumption of the use of property which belongs to another; an interruption or the disturbing a man in his right and possession. Tomlins.

The unlawful seizure or assumption of sovereign power; the assumption of government or supreme power by force or illegally, in derogation of the constitution and of the rights of the lawful ruler.

"Usurpation" for which writ of prohibition may be granted involves attempted exercise of power not possessed by inferior officer. Ex parte Wilkinson, 220 Ala. 529, 126 So. 102, 104.

USURPATION OF ADVOWSON. An injury which consists in the absolute ouster or dispossession of the patron from the advowson or right of presentation, and which happens when a stranger who has no right presents a clerk, and the latter is thereupon admitted and instituted. Brown.

USURPATION OF FRANCHISE OR OFFICE. The unjustly intruding upon or exercising any office, franchise, or liberty belonging to another. See, also, Usurpation.

"Usurpation" of public office authorizing quo warranto action under statute may be with or without forcible seizure of office and prerogatives thereof, and may consist of mere unauthorized assumption and exercise of power in performing duties of office upon claim of right thereto. State ex rel. Kirk v. Wheatley, 133 Ohio St. 164, 12 N.E.2d 491, 493.

USURPED POWER. In insurance. An invasion from abroad, or an internal rebellion, where armies are drawn up against each other, when the laws are silent, and when the firing of towns becomes unavoidable. These words cannot mean the power of a common mob. 2 Marsh.Ins. 791.

USURPER. One who assumes the right of government by force, contrary to and in violation of the constitution of the country. Toul, *Droit. Civ.* n. 32.

USURPER OF A PUBLIC OFFICE. One who either intrudes into a vacant office or ousts the incumbent without any color of title. Neal v. Parker, 200 Ark. 10, 139 S.W.2d 41, 44. One who intrudes on office and assumes to exercise its functions without legal title or color of right thereto. Alleger v. School Dist. No. 16, Newton County, Mo.App., 142 S.W.2d 660, 663; State ex rel. City of Republic v. Smith, 345 Mo. 1158, 139 S.W.2d

929, 933. Any person attempting to fill pretended office attempted to be created by an unconstitutional law. Bodcaw Lumber Co. of Louisiana v. Jordan, La.App., 14 So.2d 98, 101.

USURY.

Modern Law

An illegal contract for a loan or forbearance of money, goods, or things in action, by which illegal interest is reserved, or agreed to be reserved or taken. Midland Loan Finance Co. v. Lorentz, 209 Minn. 278, 296 N.W. 911, 914, 915. An unconscionable and exorbitant rate or amount of interest. Heilos v. State Land Co., 113 N.J.Eq. 239, 166 A. 330, 332. An unlawful contract upon the loan of money, to receive the same again with exorbitant increase. 4 Bl.Comm. 156. The reserving and taking, or contracting to reserve and take, either directly or by indirection, a greater sum for the use of money than the lawful interest. See Henry v. Bank of Salina, 5 Hill. (N.Y.) 528; In re Elmore Cotton Mills (D.C.) 217 F. 810, 814. See, also, Usurious Contract.

"Usury" does not depend on question whether the lender actually gets more than the legal rate of interest or not; but on whether there was a purpose in his mind to make more than legal interest for the use of money, and whether, by the terms of the transaction, and the means used to effect the loan, he may by its enforcement be enabled to get more than the legal rate. American Nat. Ins. Co. v. Schenck, Tex.Civ.App., 85 S.W.2d 833, 837.

A profit greater than the lawful rate of interest, intentionally exacted as a bonus, for the forbearance of an existing indebtedness or a loan of money, imposed upon the necessities of the borrower in a transaction where the money is to be returned at all events. Monk v. Goldstein, 172 N.C. 516, 90 S.E. 519, 520; Anderson v. Beadle, 35 N.M. 654, 5 P.2d 528, 529.

Old English Law

Interest of money; increase for the loan of money; a reward for the *use* of money. 2 Bl.Comm. 454. The taking of any compensation whatever for the use of money. Marshall v. Beeler, 104 Kan. 32, 178 P. 245, 246; Schlesinger v. State, 195 Wis. 366, 218 N.W. 440, 442, 57 A.L.R. 352.

USUS. Lat. In Roman law. A precarious enjoyment of land, corresponding with the right of *habitatio* of houses, and being clósely analogous to the tenancy at sufferance or at will of English law. The *usuarius* (*i. e.*, tenant by *usus*) could only hold on so long as the owner found him convenient, and had to go so soon as ever he was in the owner's way, (*molestus.*) The *usuarius* could not have a friend to share the produce. It was scarcely permitted to him (Justinian says) to have even his wife with him on the land; and he could not let or sell, the right being strictly personal to himself. Brown.

USUS BELLICI. Lat. In international law. Warlike uses or objects. It is the *usus bellici* which determine an article to be contraband. 1 Kent, Comm. 141.

USUS EST DOMINIUM FIDUCIARIUM. Bac. St. Uses. Use is a fiduciary dominion.

USUS ET STATUS SIVE POSSESSIO POTIUS DIFFERUNT SECUNDUM RATIONEM FORI, QUAM SECUNDUM RATIONEM REI. Bac. St. Uses. Use and estate, or possession, differ more in the rule of the court than in the rule of the matter.

USUS FRUCTUS. Lat. In Roman law. Usufruct; usufructuary right or possession. The temporary right of using a thing, without having the ultimate property, or full dominion, of the substance. 2 Bl.Comm. 327.

UT CURRERE SOLEBAT. Lat. As it was wont to run; applied to a water-course.

UT DE FEODO. L. Lat. As of fee.

UT HOSPITES. Lat. As guests. 1 Salk. 25, pl. 10.

UT PŒNE AD PAUCOS, METUS AD OMNES PERVENIAT. That the punishment may reach a few, but the fear of it affect all. A maxim in criminal law, expressive of one of the principal objects of human punishment. 4 Inst. 6; 4 Bl. Comm. 11.

UT RES MAGIS VALEAT QUAM PEREAT. That the thing may rather have effect than be destroyed. Simonds v. Walker, 100 Mass. 113; National Pemberton Bank v. Lougee, 108 Mass. 373, 11 Am. Rep. 367. Charitable bequests are also governed by this maxim. King v. Richardson, C.C.A.N.C., 136 F.2d 849, 858.

UT SUMMÆ POTESTATIS REGIS EST POSSE QUANTUM VELIT, SIC MAGNITUDINIS EST VELLE QUANTUM POSSIT. 3 Inst. 236. As the highest power of a king is to be able to do all he wishes, so the highest greatness of him is to wish all he is able to do.

UTAS. In old English practice. Octave; the octave; the eighth day following any term or feast. Cowell.

UTENSIL. A much broader term than "tool," though it may be applicable to many implements designated tools in common parlance. Murphy v. Continental Ins. Co., 178 Iowa, 375, 157 N.W. 855, 857, L.R.A. 1917B, 934. For "Farm Utensils," see that title.

UTERINE. Born of the same mother. A uterine brother or sister is one born of the same mother, but by a different father.

UTERO-GESTATION. Pregnancy.

UTERQUE. Lat. Both; each. "The justices, being in doubt as to the meaning of this word in an indictment, demanded the opinions of grammarians, who delivered their opinions that this word doth aptly signify *one of them.*" 1 Leon. 241.

UTFANGTHEF, or UTFANGENETHEF. In Saxon and old English law. The privilege of a lord of a manor to judge and punish a thief dwelling out of his liberty, and committing theft without the same, if he were caught within the lord's jurisdiction. Cowell.

The right of the lord of a manor to hang a thief caught with the stolen goods, whether or not the capture was made on the manor. 1 Holdsw. Hist. E. L. 11. See Infangenthef.

UTI. Lat. In the civil law. To use. Strictly, to use for necessary purposes; as distinguished from "*frui,*" to enjoy. Heinecc. Elem. lib. 2, tit. 4, § 415.

UTI FRUI. Lat. In the civil law. To have the full use and enjoyment of a thing, without damage to its substance. Calvin.

UTI POSSIDETIS. Lat.

The Civil Law

A species of interdict for the purpose of retaining possession of a thing, granted to one who, at the time of contesting suit, was in possession of an immovable thing, in order that he might be declared the legal possessor. Hallifax, Civil Law, b. 3, c. 6, no. 8. See Utrubi.

International Law

A phrase used to signify that the parties to a treaty are to retain possession of what they have acquired by force during the war. Wheat. Int. Law, 627.

A treaty which terminates a war may adopt this principle or that of the *status quo ante bellum,* or a combination of the two. In default of any treaty stipulation, the former doctrine prevails. Guillermo Alvarez y Sanches v. U. S., 42 Ct.Cl. 458.

UTI ROGAS. Lat. In Roman law. The form of words by which a vote in favor of a proposed law was orally expressed. *Uti rogas, volo vel jubeo,* as you ask, I will or order; I vote as you propose; I am for the law. The letters "U. R." on a ballot expressed the same sentiment. Adams, Rom. Ant. 98, 100.

UTILE PER INUTILE NON VITIATUR. The useful is not vitiated by the useless. Surplusage does not spoil the remaining part if that is good in itself. Dyer, 392; Broom, Max. 627; 2 Wheat. 221, 4 L.Ed. 224.

UTILIDAD. Span. In Spanish law. The profit of a thing. White, New Recop. b. 2, tit. 2, c. 1.

UTILIS. Lat. In the civil law. Useful; beneficial; equitable; available. *Actio utilis,* an equitable action. Calvin. *Dies utilis,* an available day.

UTILITY. In patent law. Industrial value; the capability of being so applied in practical affairs as to prove advantageous in the ordinary pursuits of life, or add to the enjoyment of mankind. Callison v. Dean, C.C.A.Okl., 70 F.2d 55, 58. The absence of frivolity and mischievousness, and utility for some beneficial purpose. Rob. Pat. § 339. But there is no utility if the invention can be used only to commit a fraud with, Klein v. Russell, 19 Wall. 433, 22 L.Ed. 116; or for some immoral purpose, Lowell v. Lewis, 1 Mason, 182, F. Cas.No.8,568; or can be used only for gambling purposes in saloons, Schultze v. Holtz, C.C.Cal., 82 F. 448; or if the invention is dangerous in its use, Mitchell v. Tilghman, 19 Wall. 287, 22 L.Ed. 125.

"Utility" is established if only partial success is attained. Emery Industries v. Schumann, C.C.A.Ill., 111 F.2d 209, 211.

The "utility" which an infringing defendant is estopped to deny means sufficient practical utility to make a device useful in the sense of the patent statute. The estoppel does not forbid him to deny that there is any useful function, or new result serving to give inventive character to the slight step which a patentee has taken in differentiation from prior art. Sandy MacGregor Co. v. Vaco Grip Co., C.C.A.Ohio, 2 F.2d 655, 656.

UTLAGATUS, or UTLAGATUM. In old English law. An outlawed person; an outlaw.

UTLAGATUS EST QUASI EXTRA LEGEM POSITUS. CAPUT GERIT LUPINUM. 7 Coke, 14. An outlaw is, as it were, put out of the protection of the law. He bears the head of a wolf.

UTLAGATUS PRO CONTUMACIA ET FUGA, NON PROPTER HOC CONVICTUS EST DE FACTO PRINCIPALI. Fleta. One who is outlawed for contumacy and flight is not on that account convicted of the principal fact.

UTLAGE. L. Fr. An outlaw. Britt. c. 12.

UTLESSE. An escape of a felon out of prison.

UTMOST CARE. Substantially synonymous with "highest care." Brogan v. Union Traction Co., 76 W.Va. 698, 86 S.E. 753, 756.

The "utmost care" which is required of a carrier of persons for reward, means the highest degree of care, but does not mean that in point of fact the same degree or quantum of care should be applied in every case, since the necessary degree of care varies with the dangers to be anticipated by a man of the utmost degree of prudence from the surrounding circumstances and conditions of each case. Chicago, R. I. & P. Ry. Co. v. Shelton, 135 Okl. 53, 273 P. 988, 990.

UTMOST RESISTANCE. This term, under the rule that to constitute rape there must be utmost resistance by the woman, is a relative rather than a positive term, and means that greatest effort of which she is capable must be used to foil assailant. State v. Brewster, 208 Iowa, 122, 222 N.W. 6. McLain v. State, 159 Wis. 204, 149 N.W. 771, 772.

UTRUBI.

Civil Law

The name of a species of interdict for retaining a thing, granted for the purpose of protecting the possession of a movable thing, as the *uti possidetis* was granted for an immovable. Inst. 4, 15, 4; Mackeld. Rom. Law, § 260.

Scotch Law

An interdict as to movables, by which the colorable possession of a *bona fide* holder is continued until the final settlement of a contested right; corresponding to *uti possidetis* as to heritable property. Bell.

UTRUMQUE NOSTRUM. Both of us. Words used formerly in bonds.

UTTER, *v.* To put or send (as a forged check) into circulation; Smith v. Commonwealth, 151 Ky. 517, 152 S.W. 574, 575; To publish or put forth; Barron v. State, 12 Ga.App. 342, 77 S.E. 214, 215; Valley Dry Goods Co. v. Buford, 114 Miss. 414, 75 So. 252, 254. To offer. Bish. Cr. L. § 607.

To utter and publish an instrument, as a counterfeit note, is to declare or assert, directly or indirectly, by words or actions, that it is good; uttering it is a declaration that it is good, with an intention or offer to pass it. Whart.Crim.Law, § 703; Com. v. Searle, 2 Binn., Pa., 338, 4 Am.Dec. 446; Terry v. State, 29 Ala.App. 340, 197 So. 44, 45.

To utter, as used in a statute against forgery and counterfeiting, means to offer, whether accepted or not, a forged instrument, with the representation, by words or actions, that the same is genuine. See State v. Horner, 48 Mo. 522; People v. Rathbun, 21 Wend., N.Y., 521; People v. Caton, 25 Mich. 392; Commonwealth v. Fenwick, 177 Ky. 685, 198 S.W. 32, 34, L.R.A.1918B, 1189; Jones v. State, 69 Okl.Cr. 244, 101 P.2d 860, 863; 2 Bish.Cr.L. § 605.

"Uttering" or "publishing" a check consists in presenting it for payment, and the act is then done although no money may be obtained. State v. Hobl, 108 Kan. 261, 194 P. 921, 924.

UTTER, *adj.* Entire; complete; absolute; total. Bell v. Commonwealth, 170 Va. 597, 195 S.E. 675, 683.

In a statute making utter desertion for three years a ground for divorce, it suggests an abnegation of all the duties and obligations resulting from the marriage contract. Moody v. Moody, 118 Me. 454, 108 A. 849.

UTTER BAR. In English law. The bar at which those barristers, usually junior men, practice who have not yet been raised to the dignity of king's counsel. These junior barristers are said to plead without the bar; while those of the higher rank are admitted to seats within the bar, and address the court or a jury from a place reserved for them, and divided off by a bar. Brown. Also called "outer bar."

UTTER BARRISTER. In English law. Those barristers who plead without the bar, and are distinguished from benchers, or those who have been readers, and who are allowed to plead within the bar, as the king's counsel are. Cowell. See Outer Bar.

UXOR. Lat. In the civil law. A wife; a woman lawfully married.

Et Uxor

And his wife. A term used in indexing, abstracting, and describing conveyances made by a man and his wife as grantors, or to a man and his wife as grantees. Often abbreviated *"et ux."* Thus, "John Doe *et ux.* to Richard Roe."

Jure Uxoris

In right of his wife. A term used of a husband who joins in a deed, is seised of an estate, brings a suit, etc., in the right or on the behalf of his wife. 3 Bl. Comm. 210.

UXOR ET FILIUS SUNT NOMINA NATURÆ. Wife and son are names of nature. 4 Bac. Works, 350.

UXOR NON EST SUI JURIS, SED SUB POTESTATE VIRI. A wife is not her own mistress, but is under the power of her husband. 3 Inst. 108.

UXOR SEQUITUR DOMICILIUM VIRI. A wife follows the domicile of her husband. Tray. Lat. Max. 606.

UXORICIDE. The killing of a wife by her husband; one who murders his wife. Not a technical term of the law.